



Decision Regulation Impact Statement for changes to the National Quality Framework

January 2017

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The document must be attributed as the *Decision Regulation Impact Statement for changes to the National Quality Framework*.

About this Decision RIS

The purpose of this Decision Regulation Impact Statement (Decision RIS) is to recommend preferred options for improving the National Quality Framework for Early Childhood Education and Care. The Decision RIS follows the public release of the Consultation RIS and incorporates stakeholders' views and comments received during the ten week stakeholder consultation process from November 2014 to January 2015.

The Decision RIS provides feedback on proposed options canvassed in the Consultation RIS throughout the abovementioned period. As such, the Decision RIS provides a 'point in time' analysis. This Decision RIS identifies the nature of the issues to be addressed and explains the rationale for the preferred options. It also assesses the costs and benefits of the options under consideration.

This Decision RIS follows the guidelines of the Council of Australian Governments (COAG) in the Best Practice Regulation Guide. It has been approved for release by the COAG Education Council.

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Acronyms

ACA	Australian Childcare Alliance
ACECQA	Australian Children’s Education and Care Quality Authority
BBF	Budget Based Funded
CCMS	Child Care Management System
COAG	Council of Australian Governments
ECEC	Early childhood education and care
ECPG	Early Childhood Policy Group
ECT	Early childhood teacher
ELAA	Early Learning Association Australia
EYLF	Early Years Learning Framework
FAL	Family Assistance Law
FDC	Family day care
FDCA	Family Day Care Australia
FTE	Full-time equivalent
LDC	Long day care
MTOP	My Time, Our Place Framework for School Aged Care
NCAC	National Childcare Accreditation Council
NP NQA	National Partnership Agreement on the National Quality Agenda for Early Childhood Education and Care
NOSHA	National Outside School Hours Services Association
NQA	National Quality Agenda
NQF	National Quality Framework
NQS	National Quality Standard
OSHC	Outside school hours care
PIDTDC	Person in day-to-day charge
QIP	Quality Improvement Plan
RIS	Regulation Impact Statement

Definitions

Term	Definition
Service types	<p>In the early childhood education and care sector, there are a range of types of education and care services. These service types provide different types of education and care and are treated differently under both national and state/territory regulations. The service types currently under scope of the National Quality Framework (NQF) are:</p> <ul style="list-style-type: none"> • Family day care • Outside school hours care • Long day care • Preschool <p>Note: the National Law and National Regulations refer to these service types as either centre-based or family day care services.</p>
Regulatory authority	<p>Refers to state and territory regulators of the early childhood education and care sector. Regulatory authorities regulate and assess early childhood education and care services according to the National Law and National Regulations under the NQF. Regulatory authorities also regulate some services that are out of scope of the NQF.</p>
Family day care (FDC)	<p>Refers to services that support a network of individual educators and are services in receipt of the Child Care Benefit where an educator provides flexible care typically in their own home for other people's children and as part of coordinated home-based care schemes. Care is predominantly provided for children aged birth to 6 years old who are not yet at school, but may also be provided for school-aged children. Educators can provide care for the whole day, part of the day, or for irregular or casual care.</p>
Long day care (LDC)	<p>Refers to a centre-based form of service in receipt of Child Care Benefit. LDC services provide all day or part-time care for children aged birth to 6 who attend the centre on a regular basis. Care is generally provided in a building, or part of a building, that has been created or redeveloped specifically for use as a child care centre (i.e. centre-based service) and children are usually grouped together in rooms according to age. Centres, in the majority of cases, operate between 7:30 a.m. and 6:00 p.m. on normal working days for 48 weeks per year.</p>
Outside school hours care (OSHC)	<p>OSHC is defined as care provided by formal OSHC services, principally for school-aged children — up to approximately 12 years of age — before school, after school, during school holidays and/or on pupil free days. OSHC may use stand-alone facilities, share school buildings and grounds and/or share community facilities.</p>
Preschool	<p>Refers to services covered by the NQF that provide an early childhood education program, delivered by a qualified teacher, often but not necessarily on a sessional basis in a dedicated service.</p> <p>Under the National Partnership Agreement on Universal Access to Early Childhood Education, an early childhood education program is defined as a program delivered in the year before full-time school in a diversity of settings, including long day care centre-based services, stand-alone preschools and preschools that are part of schools.</p> <p>The program is to provide structured, play-based early childhood education delivered in accordance with an approved learning framework (such as the Early Years Learning Framework) and the National Quality Standard and delivered by a qualified early childhood teacher who meets the NQF requirements.</p>

Occasional care	Refers to a service providing ECEC to children primarily on an ad hoc or casual basis where: (i) the service does not usually offer full-time or all day basis; and (ii) most of the children provided with ECEC are preschool age and under.
Budget Based Funded	Refers to services that receive direct funding under the Commonwealth Budget Based Funded (BBF) program only and not any services that are directly funded. These services are generally located in Indigenous communities, regional and remote areas where the market would otherwise be unviable. Often these services are the sole providers of early childhood education and care in their community. Currently, BBF services are not within the scope of the NQF.
Mobile services	A service providing education and care primarily to children preschool age or under that transports its equipment and materials or staff to one or more locations on each occasion that the service is provided.
Playschools	Refers to services licensed under the Children and Young People Act 2008 in the ACT that provide sessional education and care to children from three years to school age. Currently, playschools are not within the scope of the NQF.

Note: A key objective of the National Quality Agenda (NQA) was to deliver an integrated and unified national system for early childhood education and care and school aged care. As a result, four years into the implementation of the NQF, some of the service types defined here reflect this integration. For example, the requirement for an early childhood teacher in LDC services under the NQF, means that many LDC services now offer preschool programs clearly demonstrating the integration of services.

Introduction

Quality early childhood education and care (ECEC) plays a vital role in supporting the learning and development of Australian children in the early years and helps to lay the foundation for better health, education and employment outcomes later in life. The National Quality Framework (NQF) sets the minimum quality standards and establishes the rating system for most long day care (LDC), family day care (FDC), preschool and outside school hours care (OSHC) services in Australia to help support these outcomes by improving the quality of services across the nation.

The ECEC sector is a significant component of the Australian economy, with the Australian Government Department of Education and Training estimating that the total cost of delivering ECEC in Australia in 2013–14 was more than \$10 billion (including both Government and private contributions). As observed by the Productivity Commission in its Inquiry into Childcare and Early Childhood Learning (2014), almost all of Australia's 3.8 million children aged 12 years or under have participated or will participate in some form of ECEC.

A review of the National Quality Agenda (NQA) – the NQA Review – commenced in 2014, aiming to ensure that the goal of improving ECEC quality is being met in the most efficient and effective way. Arising from findings of this Review, a Consultation Regulation Impact Statement (RIS) was developed and released in November 2014 to test a range of possible changes to the NQF.

The Review has identified a number of recommendations for changes to the *Education and Care Services National Law Act 2010*, the Education and Care Services National Regulations and to operational processes to clarify expectations, reinforce policy intent, and streamline and reduce regulatory burden. The recommendations arising from the Review support a simplified and more transparent system and consolidate the consistent approach to quality education and care of children, regardless of service delivery type or location.

Taking into account the feedback and evidence provided in response to the Consultation Regulation Impact Statement, this Decision Regulation Impact Statement (RIS) has been developed to assess the impact of proposed changes to the NQF.

The proposals in the Decision RIS centre on areas where the application of the NQF could be further refined or clarified, helping to ensure the NQF more effectively and efficiently achieves its purpose. This includes amendments to areas where further efficiency gains or quality measures could be introduced, and in particular, to increase the ability for governments to strengthen regulation, enforce compliance with requirements and ensure the objectives of the NQF is being met.

In the context of the existing requirements of the NQF, the proposals in the Decision RIS will have comparatively small impacts on the ECEC sector. Overall, there are likely to be both incremental quality benefits and cost impacts. Impacts at individual services may, however, be material and these are detailed in the analysis provided later in the RIS.

Summary of Findings and Proposals

This RIS proposes changes to the NQF for ECEC services. On 1 January 2012, the NQA — a major initiative which sought to introduce nationally consistent quality delivery of education and care services for children — commenced implementation. Two years on from its implementation provided a timely opportunity to examine the operation of the NQF and, based on evidence, analysis and feedback, investigate whether the NQF could be further refined.

A national public consultation process undertaken by Woolcott Research Pty Ltd (Woolcott Research) in mid-2014 as part of the NQA Review indicated there was general consensus of support for the NQA amongst the ECEC sector, with some success in delivering a more unified national regulatory system which contributes to improved quality in the provision of education and care services.

Following the initial consultation with the sector and community, a Consultation RIS, which put forward a range of possible options for changes to the NQF, was developed and publicly released in November 2014.

The Consultation RIS process presented an opportunity for regulators, services, educators and the community more widely to reflect on the current application of the NQF and provide comment on potential refinements.

In response to the request for comments and input, over 2,500 individual responses were received from across Australia and across all facets of a very diverse sector. These responses widely acknowledged the positive role of the NQA in raising the consistency of quality service delivery nationally.

The NQA Review has provided an opportunity to consider possible improvements to the system and should not be viewed as meaning the system is not working as intended. It has resulted in a number of recommendations for changes to the National Law, National Regulations and to operational processes to clarify expectations and reinforce policy intent, and streamline and reduce regulatory burden whilst maintaining a focus on improved outcomes for children. The NQA Review has also identified measures to promote national consistency and enhance the efficiency and transparency of the quality assessment and rating system.

The proposals in this Decision RIS centre on areas where the application of the NQF could be further refined or clarified, helping to ensure the NQF more effectively and efficiently achieves its purpose. This includes amendments to areas where further efficiency gains or quality measures could be introduced. The proposed changes reflect what stakeholders have said through the Consultation RIS process and an assessment of the 'net benefit' of each change — that is, whether the benefits of the change are likely to be greater than the costs.

The RIS consultations found that the majority of the proposed options were supported by stakeholders as being timely and appropriate.

There are 135 recommendations arising from the NQA Review. The Decision RIS explores each of the substantive proposals — contained in the Consultation RIS — in greater detail, including the rationale for the proposal, consultation feedback for the proposal, assessment of net benefit for each proposal and, ultimately, the identification of a preferred option. The Office of Best Practice Regulation (OBPR) has determined that of the 52 substantive proposals, 29 of these would, if adopted, involve a material regulatory cost or saving to ECEC services.

While care has been taken in specifying the preferred options in detail, readers should be aware minor amendments may be made to the wording of preferred options in the drafting and/or passage of legislation.

Readers should also note the costings in this document are indicative, averaged over ten years, and the assumptions used may vary from practice in some jurisdictions and at individual services. Costings within this Decision RIS were developed by the Australian Government Department of

Education and Training based on a variety of data and information sources. Complex costings were subject to an independent validation process which was supported by a series of consultations with ECEC peak bodies and large organisations to test assumptions.

Impact of preferred options

Each of the 29 proposals has been costed in detail to allow for informed decisions to be taken by governments. This Decision RIS presents a balanced package of preferred options designed to improve the effectiveness and efficiency of the NQF. If adopted in full, the preferred options will both improve the effectiveness of the NQF while at the same time generating an estimated \$43.6 million in average, annual net administrative savings to ECEC services over the next 10 years after implementation of changes — saving industry an estimated \$436 million in reduced regulatory burden over the next decade in total. This amount is made up of an estimated \$59.3 million in annual administrative savings and \$15.7 million in annual administrative costs.

The vast majority of the proposed changes will impact on services in all states and territories equally, as the aim of most proposals is to consolidate the consistent approach to quality education and care of children regardless of service delivery type or location. There are some changes, however, in respect of arrangements that are not yet consistent across the country, which will impact on certain states and territories and sectors more than others, as all service providers move towards a nationally consistent regulatory framework. For example, it is proposed that the National Regulations should be amended to establish a national educator to child ratio of 1:15 for all services providing education and care services to children over preschool age. New South Wales is the only jurisdiction which has some services operating at lower ratios (each educator cares for more children) than the proposed national ratio.

The proposed changes seek to ensure access to a diverse range of quality service delivery, while recognising and accommodating the specific challenges associated with different provider models. Some changes may result in higher compliance requirements for some individual service providers as they move to a nationally consistent model of regulation, particularly in FDC services. However, this will be balanced with greater assurance for families that children are receiving quality care, irrespective of service type.

A detailed summary of all the preferred options is provided in [Appendix A](#) and a list of the costed proposals, averaged over ten years, is at [Appendix B](#).

Of the total 52 proposals, the majority of the regulatory impacts are driven by three main categories of change, including:

1. A simplified and more transparent assessment and rating process

All services covered by the NQF are expected to benefit from a simplified and more transparent assessment and rating process. This includes a revised National Quality Standard (NQS) (Proposal 1.1) and separately, a streamlined national approach to assessment and rating, including through supporting templates and documents and further rigorous training of authorised officers (Proposal 1.2).

Implementing the revised National Quality Standard is estimated to save about \$1.44 million annually in regulatory burden after the revised NQS has been established, but is estimated to involve transition costs of an estimated \$14.8 million in one-off additional regulatory burden to establish. This averages to an additional net cost of \$39,500 annually over the next ten years.

The regulatory savings after the establishment of the revised NQS would be driven by a small reduction in the time it takes services to prepare a Quality Improvement Plan (QIP) and consideration of the NQS in the future development of service level policies and practices. Implementation of the revised NQS is unlikely to significantly impact the rate of assessment and rating of services.

2. Documentation of assessments or evaluations of school age children

All governments agree planning, documenting and evaluating children's wellbeing and development must be part of an ongoing cycle undertaken by educators of school age children in OSHC. The way in which services for school age children document assessments or evaluations, however, varies between states and territories, reflecting regional variations in current practice.

In Victoria, Western Australia, South Australia, Tasmania and the Australian Capital Territory, no change to current requirements under the National Law or regulation 74 is proposed. Instead clear guidance will be developed for all services providing care to children over preschool age and authorised officers on what is appropriate documentation proportionate to a child's pattern of attendance, including examples of the type of documentation to be kept. This guidance is expected to streamline documentation of assessments or evaluations in school age children in care (Proposal 1.3) and is estimated to save OSHC services \$20.7 million annually in these states and territories.

In New South Wales, Queensland and the Northern Territory, it is proposed that jurisdiction specific regulations be inserted in the National Regulations to provide that for programs for children over preschool age, services will be taken to meet the program documentation requirements for regulation 74, if the documentation provides evidence about the development of the program. Separate jurisdiction specific guidance materials will be developed for both service providers and authorised officers on what is required for service providers in New South Wales, Queensland and the Northern Territory to meet these program documentation requirements. A reduction in documentation of assessments or evaluations of school children in care (Proposal 1.3) is estimated to save OSHC services \$35.9 million annually in these states and territories.

3. Measures to improve oversight of and support within Family Day Care services

It is proposed there be improved oversight of, and support within, FDC services to increase the integrity and transparency of FDC delivery and help ensure quality outcomes for children. This will be achieved through:

- a requirement for approved FDC providers to hold a service approval in each jurisdiction in which they operate
- granting regulatory authorities the power to impose a maximum number of educators approved to be engaged or registered by a FDC service and include this on the service approval as a condition of the service approval
- requiring approved providers of an FDC service to have a prescribed minimum ratio of one FDC co-ordinator for every 15 educators for the first 12 months of the operation of the service; and one FDC co-ordinator for every 25 educators after the first 12 months of the operation of the service and providing regulatory authorities with discretion to impose a 1:15 ratio after the first 12 months of the operation
- clarifying the role and use of FDC educator assistants

- allowing authorised officers to enter a residence during usual operating hours where:
 - the authorised officer reasonably believes that a service is operating, or
 - the FDC register indicates the service should be operating at the residence at the time of entry.

The measures to improve oversight of and support within FDC services (Proposals 7.1 to 7.7) are estimated to cost \$10.4 million annually.

Impact of changes on families

Quality ECEC is important for families as it gives parents confidence in the system they entrust with the care of their children. The NQF aims to drive continuous improvement and consistency in Australian ECEC services and early learning programs to provide children with quality experiences. All governments have worked throughout the Review and the Decision RIS process to ensure the NQF continues to meet parent's expectations.

Research conducted by Woolcott Research Pty Ltd in 2014 found that families have a limited awareness and understanding of the NQF, but revealed parents who were aware of the NQF were generally positive about its introduction and almost half of families reported they had seen an improvement in the quality of their child's service since the introduction of the NQF in 2012. The consultation found that families who did not have a strong awareness or understanding of the NQF were still supportive of its implementation, as families felt the sector should have high quality standards.

Changes to the NQS will strengthen quality through providing greater clarity for educators, assisting them to understand what is required, thereby leading to improved quality and outcomes. The introduction of educator to child ratios for all school age children will provide benchmarks for engagement with children and supervision.

Despite the Consultation RIS process being open to all members of the public, the overall participation rate of families in the Consultation RIS process was low. The direct impact of the proposed changes on parents is estimated to be low. The changes to enhance children's developmental and learning outcomes, protect the health, safety and wellbeing of children and improve the oversight and support within FDC services are likely to provide greater assurance to parents that children are receiving quality care, irrespective of service type.

This Decision RIS outlines a range of proposed changes, some of which provide regulatory savings and some of which add administrative costs. In terms of potential cost impacts on families, these are difficult to determine as fee charging practices are independent business decisions of ECEC services. There is a large range of contestability in Australia's differentiated and localised markets for ECEC services, and as a result the degree to which savings and costs arising from implementing the measures from this Review will be passed on to families will vary.

The overall cost impact on families of implementing the changes in this Decision RIS, when analysed in the context of the \$10 billion annual investment on ECEC and estimated savings of \$43.6 million in average annual net regulatory savings to the ECEC sector, is expected to be low.

Guide to this document

This Decision RIS comprises a background section and nine chapters and five appendices.

Background

The Background provides an overview of the development and implementation of the NQF. It also outlines the general process undertaken in preparation of a RIS and the specific approach taken to this RIS.

Chapters 1 to 8 — Options for consideration

Chapters 1 to 8 discuss the preferred options for consideration. Each chapter outlines the issue which the RIS is attempting to address, the potential options for change, the consultation feedback for each option, the assessment of net benefit for each option and in conclusion, the identification of a preferred option.

Chapter 9 — Implementation and evaluation

Chapter 9 describes the possible timing for any changes that flow from the NQA Review.

Appendix A — Summary of proposals and preferred options

Appendix A lists all proposals presented in the RIS and the preferred options.

Appendix B — Summary of costings

Appendix B lists the results of the preferred options that have been costed.

Appendix C — Further background to the National Quality Framework

Appendix C provides further background to the NQF.

Appendix D — Overview of consultation participation

Appendix D provides further information on the characteristics of consultation respondents, including a list of published written submissions.

Appendix E — Draft revised National Quality Standard

Appendix E provides the draft amended National Quality Standard.

Background

Review of the National Quality Agenda

In July 2009, the Council of Australian Governments (COAG) endorsed a vision for early childhood development that ‘by 2020 all children have the best start in life to create a better future for themselves, and for the nation’. The National Quality Agenda (NQA) is one of the national reform initiatives that enable this vision to be progressed. The NQF is governed by the National Partnership Agreement on the National Quality Agenda for Early Childhood Education and Care (NP NQA). Following the passage of nationally consistent legislation, the NQF commenced progressive implementation from 1 January 2012.

The objectives of the NQA, as outlined in section 3(2) of the *Education and Care Services National Law Act 2010* (National Law), are to:

- ensure the safety, health and wellbeing of children attending education and care services
- improve the educational and developmental outcomes for children attending education and care services
- promote continuous improvement in the provision of quality education and care services
- establish a system of national integration and shared responsibility between participating jurisdictions and the Australian Government in the administration of the NQF
- improve public knowledge, and access to information, about the quality of education and care services
- reduce the regulatory and administrative burden for education and care services by enabling information to be shared between participating jurisdictions and the Australian Government.

Further background information regarding the NQF is provided in [Appendix C](#).

The NQA is a major national policy initiative that has affected the majority of ECEC services across Australia and has required the co-operation of governments and the sector in its establishment and implementation from 2012. When the NQF was introduced, there were a number of issues where it was considered appropriate that the status quo be retained for the time being, in the interests of managing the process of implementation and transition. In these instances, it was intended that the introduction of the measures under consideration — whether regulatory coverage, standards or process — would be re-assessed when the policy was reviewed in 2014. Hence, among the options put forward for consideration in this RIS are changes which were deferred for consideration when the policy was originally introduced. All changes proposed are supported by consideration of the evidence, including stakeholder feedback.

Under the NP NQA, governments committed to a review in 2014 on progress made by jurisdictions in achieving the agreed objectives and outcomes (NQA Review). The NQA Review aimed to assess whether the goal of improving quality in ECEC services is being met in the most efficient and effective way. The NQA Review also provides an opportunity to consider possible improvements to the system.

A national public consultation process was undertaken by Woolcott Research Pty Ltd (Woolcott Research) during 2014 as an initial phase of the NQA Review. This consultation process enabled parents, families, educators, providers and other key stakeholders to provide feedback on the implementation and operation of the NQF, including how it may be improved. The findings of

the Woolcott Research consultation indicated that the NQF has been successful in delivering a more unified national regulatory system which contributes to improved quality in the provision of education and care services, with a general consensus of support for the NQF. However, feedback also supported the case for considering adjusting the parameters and operation of the NQF to improve the effective and efficient achievement of its purpose. This feedback informed the development of the options canvassed in this Decision RIS.

The Australian Government and state and territory governments have affirmed a strong commitment to the principles of improved educational and developmental outcomes for children and reducing regulatory burden, which are ongoing objectives of the NQA. A number of the measures put forward for consideration are directly geared towards reducing the burden on the sector.

The proposed options for change in the Consultation RIS and proposals in this Decision RIS are refinements to a major policy initiative that has been widely acknowledged by stakeholders as successfully raising the consistency of quality service delivery in ECEC nationally and reducing duplication through the consolidation of nine separate regulatory schemes that were previously administered by national, state and territory regulatory authorities.

Development of the Regulation Impact Statement

Regulation Impact Statement

A RIS assesses the impact of potential changes in regulation and is designed to ensure that regulation is imposed only when there is a justified need. Regulation is any rule endorsed by government where there is an expectation of compliance. A RIS is necessary when proposing a change to regulation that may have a regulatory impact on business and communities.

Under guidelines agreed to by all governments, a RIS must consider certain questions which include:

1. What is the problem you are trying to solve?
2. Why is government action needed?
3. What policy options are you considering?
4. What is the likely benefit of each option?
5. Who will you consult about these options and how will you consult them?
6. What is the best option from those you have considered?
7. How will you implement and evaluate your chosen option?

This Decision RIS addresses these questions.

Development of options and the Consultation RIS

While the Woolcott Research undertaken as part of the NQA Review found a general consensus that the NQF had been successful in raising quality standards across the sector, the consultation feedback also identified issues in relation to the implementation of the NQF which require further refinement including:

- A lack of clarity about what is expected of services, particularly in interpreting NQF requirements (although these concerns are expected to diminish as the requirements become better understood and the efficiency of regulatory compliance improves).

- A desire to reduce administrative burden relating to the regulatory requirements of the NQF was commonly suggested by those consulted. This is consistent with the Australian Children's Education and Care Quality Authority's (ACECQA) 2013 findings on sector administrative burden associated with the NQF.
- Implementation issues were also identified by regulatory authorities. In particular, there are concerns that some parts of the National Law and National Regulations are not clear for the ECEC sector. This lack of clarity or other factors may lead to an increased risk of inappropriate practice.

The policy options in the Consultation RIS were informed by the Woolcott Research consultations and were subject to discussion between the responsible authorities from state and territory governments, the Australian Government and ACECQA.

The policy options were designed with reference to *Best Practice Regulation: A Guide for Ministerial Councils and National Standard Setting Bodies* (COAG, 2007) and as such took into consideration the comparative international standards, regulatory burden, competition impacts, risk, and compliance and enforcement issues. The Consultation RIS was publicly released on 7 November 2014 and was made available on the Deloitte Access Economics website¹.

Consultation process

The Consultation RIS provided the basis of a consultation process to obtain feedback from the sector and community regarding the options proposed and to further refine them in the interests of maximising the efficacy and efficiency with which the NQA achieves its objectives.

Within the Consultation RIS, proposed options were presented with a status quo, or 'no change' option.

There were four ways for the public to provide their responses to the Consultation RIS:

- attend a public consultation session
- provide a formal written submission
- complete an online survey
- provide an online comment.

The number of respondents using each form of consultation is provided in Table 1.

Table 1 Number of responses by consultation mode

Form of consultation	Responses
Attending a public consultation session	1,783
Providing a formal written submission	113
Completing an online survey	670
Providing an online comment	106
Total responses	2,618*

*Note: Stakeholders may have used more than one consultation mode and, therefore, the total responses may overstate the total number of unique stakeholders who engaged with the process.

¹ <http://www.deloitteaccesseconomics.com.au/our+services/nqf+consultation+ris>

Public consultation sessions

Throughout November 2014 and into early December 2014, public consultation sessions were held in each state and territory, in capital cities and regional areas. Representatives from the Australian Government and state and territory governments presented at each session and representatives from ACECQA were also available to answer questions.

The sessions were managed by the National Outside School Hours Services Association (NOSHSA) on behalf of the Australian Government Department of Education and Training. Session details, including how to register to attend, were available on the NOSHSA website, with a link provided on the Deloitte Access Economics website.

Further information on the participation in consultations is provided in [Appendix D](#).

Peak consultation sessions

Consultation sessions were held with early childhood peak bodies in November and December 2014. There was a session for national peak bodies and one held for peak bodies in each state and territory capital city. The sessions followed the same format as the public sessions.

Additional sessions were held with peak bodies on the scope of the revised National Quality Standard (NQS). A national consultation session was held in Melbourne on 8 April 2015. The national session was organised by ACECQA, delivered by the Victorian Government on behalf of the Early Childhood Policy Group (ECPG) (a group of senior government officials from each state and territory responsible for ECEC that reports to the Australian Education Senior Officials Committee) and the NQS Working Group. Local consultation sessions were also held on the revised NQS for jurisdictional stakeholders in New South Wales, Queensland, Western Australia and South Australia.

An additional session was held in Sydney on 26 March 2015 with FDC peak bodies. The session was organised by New South Wales Government to discuss the options relating to FDC in the Consultation RIS in more detail and each peak FDC body from each state and territory was invited to participate. Further information on the participation in consultations is provided in [Appendix D](#).

Formal written submissions

Members of the public were invited to prepare formal written submissions in response to the Consultation RIS. Information on how to make a submission was provided on the Deloitte Access Economics website. The period for submitting written submissions opened on 10 November 2014 and closed on 16 January 2015.

Further information about written submissions is provided at [Appendix D](#).

Online survey

An online survey was developed so that interested parties could indicate their level of support for whether a change was required, and subsequent level of support on the proposed options for change. Respondents were able to select the sections of the survey that they wished to answer. The survey also provided opportunities for free text comments. The period for completing the online survey opened on 21 November 2014 and closed on 16 January 2015.

Further information regarding the online survey respondents is provided at [Appendix D](#).

Online comments

Online comments could be submitted through the Deloitte Access Economics website. This was designed to enable respondents to contribute to the consultation in a quick and easy way.

The period for submitting online comments opened on 10 November 2014 and closed on 16 January 2015.

Further detail regarding the online comments is provided at [Appendix D](#).

How consultation responses have been represented in this Decision RIS

- The **written submissions** typically put forward a view of support or non-support for the proposed options in the Consultation RIS and provided detailed reasoning behind the position taken.
 - Written submissions have been used both to gauge support levels among the groups represented and to articulate the underlying reasons for support or non-support of different proposals.
 - There was strong representation of peak bodies among the written submissions. Given that the peak bodies represent a large number of services and educators across Australia, these responses are prominent within the RIS.
- The **online survey** generated a relatively large number of responses to questions regarding both support for any change, and the strength of agreement for the proposed options.
 - Survey results have provided quantitative and some qualitative data indicating the level of support for or against each proposal, and the reasons for this.
 - A high proportion of survey responses were from LDC educators and nominated supervisors.
- **Online comments** have been used to shed further light on issues that generated a high level of debate from the public in the online survey and written submissions. In many cases the views in the online comments were similar to those in survey responses.
- **Feedback from consultation sessions** has mostly been used to further validate other consultation sources, noting that in a group format it is difficult to assess precise support levels for individual proposed options².

Identifying the preferred options

Drawing on the consultation feedback and assessments of costs and benefits, a preferred option was identified for each proposed option. Preferred options were identified on the basis that they would provide an anticipated net benefit to society and this net benefit outweighed the potential benefits of alternative options.

The assessment considered the potential impacts of each option on stakeholders, and costs and benefits expected to accrue. Where possible, these costs and benefits were quantified. However, the

² Scribes at the sessions noted the views of participants that spoke on proposed options as part of the Consultation RIS, but it is noted that these views may not have been representative of all participants in a session. Also, the consultation sessions were primarily designed to provide information to participants and to seek initial views. Therefore, recorded outcomes from the public consultation sessions should be treated with caution and should not be considered in isolation to other consultation findings.

nature of the changes proposed, the impacts they generate and the extent and nature of the available data meant that in many cases detailed quantification was not possible. In these instances, a systematic qualitative assessment was conducted and a cross-section of stakeholder views has been considered.

The Decision RIS

This Decision RIS builds on the Consultation RIS. It includes the consultation findings and, based on available information about the likely impacts of the proposed options, sets out which options are preferred and why.

This Decision RIS has been prepared consistent with COAG requirements for regulatory proposals, as described in *Best Practice Regulation: A Guide for Ministerial Councils and National Standard Setting Bodies* (COAG, 2007). The overriding objective of the preferred options is to address regulatory shortcomings that have been identified and to refine the NQF with the aim of maximising the net public return it generates.

The Decision RIS seeks to ensure the public are informed of the likely impact of the proposals, and that there has been a transparent process in arriving at the preferred options. Education Council determines the scope of change. Where changes to the NQF necessitate legislative amendment, these changes are then subject to parliamentary processes in each jurisdiction.

1. Refining the National Quality Standard and assessment and rating process

The problem to be addressed

The NQS is a core component of the NQF, as it underpins and guides the quality of ECEC services. Assessment and rating by regulatory authorities aims to measure how well services are performing against the NQS, the National Law and the National Regulations (the current NQS and ratings are summarised in Appendix C). Through the Woolcott Research consultations, stakeholders raised a number of issues concerning the effectiveness of the implementation of the NQS, including:

- burdens imposed on services participating in and complying with the assessment and rating process
- lack of consistency in the outcomes of assessment and rating processes across states and territories
- cost of implementation for regulatory authorities and the time required to conduct assessment and rating.

It is important that ratings provide accurate and meaningful information about service quality and that the assessment and rating system is sustainable and comparable across services. In response to these issues with the current assessment and rating process, a range of potential options were developed and presented in the Consultation RIS.

Consultations found that there is strong support for the removal of duplication and any unnecessary regulatory burden associated with the NQS and assessment and rating. There were however concerns with the draft revised NQS in the Consultation RIS and the timing and mode of its implementation, particularly among peak bodies and larger providers. Among the concerns raised were:

- The integrity of the NQS and the quality outcomes for children that arise from its implementation should not be compromised by efforts to reduce regulatory burden.
- No changes should be made to the NQS or the associated assessment and rating system until all services have been assessed under the current system.
- Governments should give careful consideration to prioritising the range of proposed reforms to the ECEC sector, with the most influential to occur first in a staggered manner to allow for the successful introduction of each reform.
- Investment in training and resources for regulatory authorities to increase consistency in the outcomes of the assessment and rating process may be more effective in reducing regulatory burden.
- The sector has undergone major change in recent years and further changes need to take account of this.
- The sector will incur additional one-off costs to implement the change.

The Productivity Commission – which undertook an inquiry into the sector in 2014 – recommended removing or changing some elements and standards of the NQS while maintaining outcomes for children.

Given the strong support among individual providers and educators, there are clear arguments for this proposal to proceed. Therefore, following the public consultations, targeted discussions (organised by ACECQA and facilitated on separate occasions by ACECQA and the Chair of the ECPG) with several peak bodies and larger providers who had raised substantive issues with the proposal were held in Brisbane, Sydney, Melbourne and Adelaide during April 2015. These discussions provided further feedback and information that informed the development of a modified draft NQS (see [Appendix E](#)), and a proposed timeframe for its introduction. While it has not been possible to address all of the concerns raised (a number of which were contradictory), the proposal has been improved, as outlined in section 1.1 below.

1.1. RIS Proposal 1.1 — Reducing the complexity of the National Quality Standard

Options for reducing the complexity of the National Quality Standard

Option	Description
1.1A	No change
1.1B	Reduce the complexity of the NQS through a draft revised Standard

In its 2013 *Report on the National Quality Framework and Regulatory Burden*, ACECQA reported a widespread view that the NQS is contributing to an increase in the quality of service delivery across the sector. There was a perception among providers who had not been assessed and rated that the process would be complex and administratively burdensome; however, ACECQA reported that providers whose services had been assessed and rated reported a lower level of administrative burden (ACECQA, 2013).

One of the measures identified to reduce regulatory and administrative burden is streamlining and clarifying the NQS, by removing or consolidating some of the 58 elements and 18 standards. Desktop analysis suggests there is some overlap between the standards. Where elements require the same action, the NQS could be refined and reduced. The language in the NQS could be made clearer. Refining the NQS could be done in a way that improves or at least maintains its reliability and validity.

A refined NQS may over time reduce the costs to providers and regulatory authorities of administering each part of the quality rating system, from preparing and reviewing QIPs to seeking and responding to reviews of rating decisions.

Given the views expressed by stakeholders after more than half of the services have been rated against the NQS, it is appropriate to consider refining the NQS and improving the assessment and rating process.

A draft revised NQS was provided in the Consultation RIS. Developed through a series of workshops with sector representatives, leading academics and officials, it comprised 15 standards and 40 elements and incorporated learning from administering the current NQS and feedback from a cross-section of sector experts. Under the draft revised option, the seven quality areas would remain, but the number of standards and elements would be reduced. The revised version sought to remove the conceptual overlap between elements and standards, simplify language and make the NQS easier to understand.

Consultation findings

*Overall, in consideration of the consultation findings, this proposal for change received a **mixed** level of support.*

Option 1.1B, the proposed reduction in complexity of the NQS, received clear support in some submissions and from the majority of survey respondents (76 per cent). Support was based primarily on the expected reduction in time spent understanding and responding to the NQS, allowing educators more time with children and the associated reduction in the administrative burden of developing policies and procedures. Any attempts to make the NQS more ‘user-friendly’ were also supported.

Of all proposed options, reducing the complexity of the NQS generated the most comment throughout the consultation process. There was strong overall support for the proposed revised NQS, particularly among individual educators and providers. Responses to the online survey, of which around 80 per cent were from individuals, indicate broad support (approximately 80 per cent) for the proposed changes to the NQS. This was also reflected in consultation sessions. Providers and educators commented in the online survey and through consultation sessions that the revised NQS was clearer (conceptually and in its language) and reduced repetition in the current NQS. Some services also commented that the changes could make the NQS clearer for educators and families.

A number of peak bodies and larger providers gave the proposed option to streamline the NQS considerably less support. They were concerned the cost and time savings of a streamlined NQS may not be sufficient to outweigh the cost of implementing the changes; for example, staff training, service level practice and documentation.

Written submissions that indicated a lack of support for the proposed option to streamline the NQS raised the following concerns (listed in order of the frequency with which they were mentioned in submissions, from most to least frequent):

- loss of quality or clarity of the NQS as a result of the streamlining process
- uncertainty regarding the anticipated regulatory benefit of the proposed changes
- timing of the proposed adjustments to the NQS
- cost to the sector of implementing a new NQS.

Many submissions and workshops held with peak bodies in April 2015 suggested improvements to the draft revised NQS, with suggested alternative wording offered. The issues that most commonly drew comments in the written submissions and online comments were as follows:

- the removal of the word ‘sustainability’ from Standard Quality Area 3.3 and Elements 3.3.1 and 3.3.2 (over half of the submissions providing specific feedback on the draft revised Standard were devoted exclusively to this point and around one in five online comments raised concerns on this point)
- absence of play-based pedagogy from Quality Area 1
- rewording of Quality Area 4.1 to ‘educators are deployed across the service’ rather than ‘Educator-to-child ratios and qualifications requirements are maintained at all times’
- removal of references to some policies
- changes to references to leadership and management.

Consistent with comments and submissions from individual providers and educators, some peak bodies and large providers did support the proposed changes.

A number of submissions stated that the original NQS was developed on the basis of extensive research and that changes to the NQS could decrease the quality of service provision. This could occur through either:

- revised wording rendering a standard or element unclear or ambiguous, creating room for misinterpretation, or
- potentially inadvertent changes to the intent of the NQS, which may impact certain quality objectives.

Several submissions stated that any changes to the NQS should be centred on improving outcomes for children, rather than decreasing regulatory burden. For instance, the Australian Education Union stated that it 'is concerned that the 'administrative burden' perceived by some providers within the ECEC sector is being given priority over the potential of exposing children to risks or to a lower quality of education and care'. United Voice took a similar stance.

'United Voice supports changes to the National Quality Standard that clarify requirements and streamline the assessment process by removing duplication. We do not support changes that will result in a watering down of the standard or reduce clarity for services or parents.'

— United Voice submission to the RIS

Several submissions queried the regulatory benefit expected as a result of streamlining the NQS. It was suggested that the draft revised NQS would not result in significant changes in behaviour on the part of services as the requirements are condensed rather than lessened or removed.

At a workshop in April 2015, the Australian Childcare Alliance stated research on administrative burden and sector feedback on the Consultation RIS survey indicated the sector was struggling with the requirements of the NQS and wanted to see it streamlined. Goodstart Early Learning thought the proposed changes would not reduce the complexity of the NQS for regulators and providers because the requirements would remain the same. There would also be considerable cost for providers to realign internal systems and resources with the revised NQS, to release educators for training and to train educators. To make this investment, Goodstart Early Learning emphasised that regulators and the sector need to be sure that benefits to the sector, children, and families outweigh the cost. Goodstart Early Learning argued that the revised NQS presented in the Consultation RIS, if implemented, will not result in a net benefit.

Several submissions contended that the cost of implementing the proposed revised set of standards would not be offset by a reduction in ongoing regulatory compliance costs. This view was more often put by peak bodies or national providers (over three quarters of submission comments) than by smaller or individual service providers. However, the costs to services are expected to centre on one-off procedures, such as adjusting policies in line with the revised NQS and further training of educators.

The following are examples of comments in submissions from peak bodies and larger providers who expressed concern at this proposed option.

'We have supported those options that provide a pragmatic approach to concerns raised about operational and administrative issues. These options are timely, easy to implement, and where

they impact on the sector will increase quality outputs for children. However, we do not support more substantial changes to the sector, particularly to the National Quality Standard and note that these suggestions contradict the RIS summary that found ‘no desire for more systematic change at this time.’

— Uniting Care Children’s Services submission to the RIS

‘While ELAA supports many of the changes proposed in the RIS as appropriate mechanisms to streamline the system and simplify the processes for services, we are opposed to those changes that are likely to negatively impact on the delivery of quality for children. In particular, we are opposed to the proposed changes to the National Quality Standard which we believe will dilute quality requirements. A reduction in the administrative requirements of the system must not lead to a reduction in the rigour of the system.’

— Early Learning Association of Australia (ELAA) submission to the RIS

‘The most significant changes relate to the National Quality Standard and the Assessment and Ratings process and after careful consideration, we do not believe there is a strong case for change relative to other priorities for regulators and the sector. The benefits of the proposed changes are limited. We do acknowledge that the changes are unlikely to have a negative impact on quality but we do not believe that they will significantly reduce the regulatory burden or improve quality either.’

— Goodstart Early Learning submission to the RIS

Some stakeholders put the view that changes to the NQS were premature based on two factors:

1. that the NQS had only been implemented recently and the sector would take some time to become confident and clear in using the system, as such it was too early to assess the real benefits or areas of unnecessary regulatory burden that could be attributed to the NQS; and
2. that approximately half the services were still to be assessed and no review of the NQS should take place until all or most services had been through this process.

‘We believe that this review process should have taken place only when at least 80 per cent of the services have been through the assessment and rating process. Services that complete the cycle at least once are more knowledgeable about the system and better able to provide feedback and commentary. The review process would have been better informed by a more universal response from the sector.’

— ELAA submission to the RIS

The timing and implementation of the revision was also questioned with respect to the impact on a sector which has recently undergone a period of major change. Several submissions argued that any benefits arising from the revised NQS would be outweighed by the uncertainty and confusion caused by making changes to a system which has been so recently introduced, and which the sector has gone to great efforts to understand in full. Another view was governments need to also consider the timing of other changes to Australian Government funding arrangements. Consultation participants also thought governments should provide appropriate support to the sector in advance of any changes and needed to be mindful of the time it takes for vocational education and training and university curricula to be implemented.

The need to test the validity and reliability of the proposed NQS was also raised. Given the level of uncertainty surrounding the expected impact of making changes to the NQF, in relation to cost, regulatory benefit and child outcomes, it was suggested in several submissions that any proposed changes be tested in the sector prior to implementation.

It was suggested in one submission that the NQS could be reviewed as a separate process on the conclusion of the first round of assessments. United Voice advocated that such a review process should be managed by an industry reference group, which could assist in identifying areas in which the attempts to simplify language will impact on practice. Gowrie Australia, NSW Children's Services Forum and the Network of Community Activities proposed a similar model. It was also noted that the NQS should be reviewed for issues affecting out of scope services.

In response to concerns raised during consultations, the validity and reliability of the proposed NQS was evaluated by the Australian Council for Educational Research (ACER). ACER has reported that the proposed NQS should provide ratings that are similar to the ratings provided under the current NQS and that it remains fit for purpose and retains its validity when compared to the current NQS.

As part of consultations, there was also concern expressed about the implementation and timing of the NQS and the implementation of other sector priorities, resourcing and reform fatigue in the sector.

It was also suggested in consultations that regulatory burden could be reduced more efficiently through other methods, such as increasing consistency of outcomes within the assessment and rating process. A couple of consultation participants thought the changes may not improve consistency of assessment and rating.

Approximately half of the written submissions that commented on this option did not support the change broadly or the incorporation of the revised NQS as proposed.

Notwithstanding concerns raised in submissions, the proposed option to simplify the NQS (Option 1.1B) was clearly supported in the online survey, with 76 per cent of survey responses to this question favouring the change³. The survey responses also indicated that for every respondent who disagreed with Option 1.1B, approximately six respondents agreed. Further, 46 per cent of survey respondents to this question stated that they strongly agreed with the proposed changes, in comparison with 8 per cent who strongly disagreed.

Table 2 Survey responses on support for change — Reducing the complexity of the NQS

Survey option	Responses
Support for retaining the current arrangements (no change)	76 (24%)
Support for changing the current arrangements (change)	243 (76%)
Total responses	319

³ As already noted, the difference in support levels between the survey and the written submissions can perhaps in part be attributed to the different cohorts who generally used each format to respond to the RIS. While the written submissions in relation to this proposed option were dominated by peak bodies and national providers, survey comments indicate that those who answered these questions via the online survey were predominately working in individual services.

Public consultation sessions in Western Australia, Victoria, Queensland, the Northern Territory and New South Wales tended to be supportive of the proposal to reduce the complexity of the NQS. The main reasons cited for this support included that the draft revised NQS was easier to understand and less ambiguous. Some participants did propose some changes be made to the draft revised NQS, for example, inclusion of play-based learning.

The consultation session with peak bodies in Tasmania noted a strong level of concern around the cost pressure that services may face in updating to a new NQS. Similarly, the Victorian peak body consultation session noted that maintaining quality is difficult in the context of constant change.

Some national peak bodies have also expressed a level of caution about the cost/benefit of implementing a revised NQS, particularly at a time when other measures arising from this review and/or the Australian Government's *Jobs for Families* Child Care Package are being implemented. In considering the implementation of the package and the implementation of changes to the NQF, it was suggested that governments should give due consideration to prioritising reforms, with the most influential to occur first in a staggered manner to allow for the successful introduction of each reform.

While the consultation process revealed clear support for revising the current NQS, the draft NQS presented in the Consultation RIS did not strike an appropriate balance between simplifying and retaining the benefits of the current NQS. In recognition of the mixed sector feedback, and based on several structured discussions facilitated by governments and ACECQA during April 2015, including with organisations that raised concerns about this proposal, the draft revised NQS has been further refined (see [Appendix E](#)). Among the key adjustments from the Consultation RIS draft are the re-instatement of a number of concepts in the current NQS that had been removed or made less apparent, including the idea of play as part of children's learning, cultural appropriateness, a focus on children's environmental responsibility, the need to revise policies and procedures, and the need to respond to customer complaints.

A paragraph above the draft revised NQS (at Chart 8) has also now been included to address concerns raised by peak bodies in April 2015 about removing explicit references to requirements of the National Law and National Regulations such as the requirement 'staffing ratios and qualification requirements are maintained at all times' in current element 4.1.1.

Guidance material showing the differences between the current and draft revised NQS could be used to illustrate how quality concepts have been retained, by showing where elements and standards have been combined but not removed.

Assessment of net benefit

The introduction of a revised NQS will result in transition costs for providers and regulatory authorities. For services, these costs will be in the form of revising existing policies and the further training of staff. Initially, there will be costs to regulatory authorities and ACECQA arising from validating the revised NQS. Once the revised NQS is agreed, there will be a series of one-off implementation costs, in the form of an education campaign for the sector, further training of authorised officers and the development of guidance materials.

The benefits of implementing the alternative option are a strengthening of quality through greater clarity. For example, the concepts in Quality Area 1 (education program and practice) are clarified

and more clearly expressed in three standards, thereby assisting services to understand what is required to meet the NQS, leading to improved quality and outcomes. In addition, it is expected there will be a heightened focus on the NQS by educators in the transition and an ongoing reduction in administrative burden. This will be driven by training of educators in the revised NQS and a reduction in the time it takes to prepare the QIP and consideration of the NQS in the future development of service level policies and practices.

Amendments to the NQS and assessment processes have been tested by experts in measurement so the community can be confident that the quality of services will be assessed reliably.

Implementation of the revised NQS is unlikely to significantly impact the rate of assessment and rating of services.

Preferred option

There is broad support for streamlining the current NQS and it is anticipated that the revised draft NQS could be implemented in a way that produces the maximum net benefit for providers. Because the NQS is a schedule to the regulations, changes can be made under current regulatory powers and are not dependent on the timing of changes to the National Law.

PREFERRED OPTION: Alternative option

Implement a revised NQS.

Amend the National Regulations to note that section 133 of the National Law requires assessment of services in accordance with the National Regulations to determine whether a service meets the NQS and the requirements of the National Regulations, with an example that for element 4.1.1, all educator to child ratios and qualification requirements must be maintained at all times for the service to meet this element.

1.2. RIS Proposal 1.2 — Streamlining the process for quality assessments

Options for streamlining the process for quality assessments

Option	Description
1.2A	No change
1.2B	Streamline the national approach to assessment and rating, including through supporting templates and documents and further rigorous training of authorised officers

There is broad concern from the sector that the assessment and rating of all services is taking too long. As at 30 August 2015, 63 per cent (9,347 services) of approved children's education and care services nationally had received a quality rating. This rate of assessment is lower than anticipated. When the NQF implementation commenced in January 2012 it was anticipated that all services would have been assessed within three years of the start of assessment and rating.

Regulatory authorities have reported that assessment and rating is more resource intensive to administer than was originally anticipated, in both conducting visits and writing assessment and rating reports. They have also advised that assessment and rating is more intensive for FDC services as they operate across multiple locations and authorised officers also visit the FDC coordination unit,

whereas the assessment and rating of a centre-based service is associated with just one location, but across multiple rooms. There has also been a high staff turnover in regulatory authorities which jurisdictions have advised is influenced by uncertainty of ongoing funding for regulatory functions. The workload for regulatory authorities has also increased as a result of the higher rates of non-compliance among some FDC services and the need for regulatory authorities to focus on this area in addressing risks to children. There has also been a high number of service approval applications in the FDC sector and unprecedented growth in the number of service providers (a 20 per cent increase in the FDC sector between June 2014 and June 2015). Regulatory authorities in some jurisdictions, for example, the Northern Territory and Queensland, have also had to work around severe weather events that have at times disrupted scheduled assessment and rating visits during the reporting period. These factors have resulted in the assessment of all services taking considerably longer than originally expected.

In April 2014, governments agreed to some operational changes to improve the efficiency of the assessment and rating process. This included changes to the quality rating report writing template and timeframes for assessment visits. States and territories have also been reviewing their processes to increase the rate of visits.

To help improve the timeliness of assessments, it is proposed that the national approach to assessment and rating be further streamlined, while ensuring that the requirements of the National Law and the minimum requirements of all jurisdictions are still met. The streamlined approach would build on best practice to deliver timely, objective, transparent and comparable quality ratings. Queensland and New South Wales have implemented new technology to improve efficiencies and other jurisdictions are also exploring these efficiencies.

The proposed change is that state and territory regulatory authorities further revise their templates and materials to improve the process. Templates and documents could be adapted or supplemented as needed by individual states and territories as part of their process improvement. All states and territories have reaffirmed that, regardless of the approach they take, they will deliver nationally consistent assessment and rating outcomes for all services.

States and territories have also agreed that, irrespective of any streamlining measures that they put in place, the process will continue to feature the following stages:

- Stage 1
 - Pre-visit review of the service's QIP
 - Desktop assessment of provider and service
- Stage 2
 - Assessment of practice at service by observation, discussion with staff and sighting documentation
 - Clarification of inconsistencies and minor adjustments
- Stage 3
 - Post visit review of evidence against requirements of the NQS
 - Consideration of feedback
 - Determination of rating.

Consultation findings

*Overall, this proposal for change received a **high** level of support.*

The responses to the proposal for streamlining the process for quality assessments were, particularly in the case of written submissions, overwhelmingly positive. Support for process streamlining was accompanied by strong comments on several issues associated with the current assessment and ratings process.

In general, the consistency of assessment and rating received the most comment in the previous consultation sessions conducted in May 2014 by Woolcott Research. The concern raised in this consultation period was that there is a high level of inconsistency inherent in the assessment and rating process, with the nature and level of feedback to services dependent on the individual assessor. Several submissions noted a desire for an adequate amount of service specific, constructive feedback to be returned to services on a consistent basis post assessment — ideally with practical suggestions as to how to address current shortcomings. The New South Wales peak body consultation session also heard the view that there was inconsistency between assessment ratings. Specifically, peak bodies noted that authorised officers assessing Indigenous services needed a higher level of culturally specific training.

Several suggestions were made in submissions on ways to increase consistency of assessment outcomes, including:

- further training of authorised officers — this could take the form of the ‘further rigorous training’ suggested in the Consultation RIS, additional sector specific training or potentially a minimum qualification requirement; for example, Diploma of Early Childhood Education and Care
- supporting templates for the NQS that are standardised across jurisdictions.

The Australian Childcare Alliance (ACA) also recommended that a team, primarily comprised of ‘hands on’ practitioners, be established to formalise the streamlining process. Several submissions also proposed that any changes to the assessment and rating process should be tested in the sector prior to implementation. The Western Australia peak body session also noted that a trial and further consultation with the sector would be preferable prior to the introduction of Option 1.2B.

Additionally, there was a level of concern over the length of time that it is taking to conduct assessments, noting that services that had been rated and were able to display their rating were at an unfair competitive advantage to those who had not yet undergone assessment. This was identified in several submissions as reflecting a lack of adequate resourcing for regulatory authorities.

‘Need to have relevant number of staff in the regulatory system to undertake assessment in whatever timeframe is mandated. Currently assessment and rating visits are not being undertaken within the regulatory timeframes. Need better consistency in type of feedback provided to services — including specific ideas and recommendations which services could use to improve their service. Current feedback mechanisms are dependent on the individual assessor.’

— Mallee Track Health and Community Service submission to the RIS

Supporters of Option 1.2B often stressed the need for further training for authorised officers. Queensland Children’s Activities Network advocate that authorised officers review not only the QIP itself but also the service’s self-assessment process that informed the QIP to ensure adequate background knowledge of the service.

In a similar vein to the written submissions, the survey responses showed a high level of support for the proposed streamlining of the NQS with over three quarters of respondents to this question being in support. Additionally, survey responses indicated that for every one respondent in disagreement with the proposed changes laid out in Option 1.2B, approximately eight respondents agreed with the changes. Forty four per cent of survey respondents stated that they strongly agreed with the proposed change, in comparison with 7 per cent who strongly disagreed.

Table 3 Survey responses on support for change — Streamlining the process for quality assessments

Survey options	Survey
Support for retaining the current arrangements (no change)	74 (23%)
Support for changing the current arrangements (change)	245 (77%)
Total responses	319

Assessment of net impact

It is reasonable to anticipate there would be a one-off costs to regulatory authorities associated with the implementation of Option 1.2B, in the re-training of authorised officers and the production of revised guidance materials. While such costs cannot be quantified with precision, it is anticipated that such a cost would be outweighed by the ongoing benefits likely to be accrued by the sector in the form of reduced administrative burden driven by the more streamlined and transparent assessment and ratings process.

Streamlining existing assessment and rating processes may reduce the time required to carry out an assessment and rating, in turn potentially reducing the cost per assessment — both to regulators and to services. It was estimated that the cost to regulatory authorities of administering the assessment and rating process was approximately \$27 million in 2013 (Deloitte Access Economics), with geographic differences — including the proportion of services in remote areas — among the drivers of variation across jurisdictions. It is also noted that this costing is based on a rate of assessment that was not meeting required timeframes, and as such, the cost of conducting the assessments within the anticipated timeframes would likely be higher than this. Although a minor reduction in regulatory effort would result in potential savings (a 1 per cent decrease in regulatory effort, for example, would equate to at least \$270,000 in savings per year).

Any small improvements in the timeliness of assessments would assist in seeing the information that this process generates become available to services and families sooner and the quality benefits it generates for services be realised earlier.

Preferred option

The assessment and rating process needs to balance the rigor of the assessment with the costs this imposes on both providers and regulators, streamlining the process, while retaining rigor, will lead to net benefits. Further, with the continued resource constraints faced by regulators, if lower per-service costs could be achieved with streamlining it would potentially allow for a greater number of services to be assessed overall. The anticipated cumulative impact of these benefits supports the assessment that a net benefit would be realised by the implementation of Option 1.2B. The expected net benefit, with the additional support from stakeholders found through consultation, renders Option 1.2B the preferred option.

PREFERRED OPTION: Option 1.2B

Assessment and rating consists of the following stages:

- Stage 1
 - Pre-visit review of the service's QIP
 - Desktop assessment of provider and service
- Stage 2
 - Assessment of practice at service by observation, discussion with staff and sighting documentation
 - Clarification of inconsistencies and minor adjustments
- Stage 3
 - Post visit review of evidence against requirements of NQS
 - Consideration of feedback
 - Determination of rating.

1.3. RIS Proposal 1.3 — Reduction in documentation of assessments or evaluations of school age children

Options for reduction in documentation of assessments or evaluations of school age children

Option	Description
1.3A	No change
1.3B	Amend regulation 74 so that services that educate and care for children over preschool age must keep documentation about development of the program, rather than about individual children's development
1.3C	Do not amend regulation 74 but retrain authorised officers to regulate and assess OSHC services in a manner that better recognises the context of OSHC services

The National Law enables regulations to be made about the quality of education programs, including their development, documentation and delivery. Regulation 74 requires approved providers of ECEC services that provide care to children over preschool age, to ensure that, for the purposes of the educational program, evaluations of a child's wellbeing, development and learning are documented. In preparing the documentation, the provider must consider the period of time the child is being educated and cared for by the service and how the documentation will be used by educators at the service.

Approved providers offering OSHC services have reported that the requirements under regulation 74 to document child assessments for children over preschool age and evaluations for delivery of the educational program can be burdensome, particularly in documenting evaluations for each individual child. This can be made more difficult due to the irregular and varying attendance pattern of some children in OSHC, in comparison to other types of services; for example, some children may only attend once every few weeks or even months. Providers have also expressed concern that many authorised officers do not adequately understand the context of OSHC services but rather see OSHC through a prism of LDC service provision.

The policy intent of regulation 74 is to ensure that children's learning under the approved learning framework is appropriately assessed, in order to enhance further learning and development. OSHC services are designed to complement the school day, and the primary focus is on providing children with play and leisure opportunities which are meaningful (*My Time, Our Place (MTOP)*, page 5). To continually engage children in meaningful activities, services must assess children's individual needs,

abilities and interests and imbue their understandings in their future programs. An ongoing cycle of assessment and planning enables services to actively lead and respond to the changing needs and preferences of the children in their care.

Consultation findings

*Overall, this proposal for change received a **high** level of support. Additionally, on an individual basis, Option 1.3B received a higher level of support than Option 1.3C.*

The majority of survey and submission respondents supported both options for change. It was noted in many submissions and online comments that the current requirements were highly burdensome and not reflective of the purpose of OSHC.

‘The major reason why this area has provided such confusion and misunderstanding within the OSHC sector is largely due to a rigid and narrow interpretation by individual Assessment and Compliance officers and the absence of OSHC specific guidelines for officers and educators on how that standard can be assessed and interpreted in an OSHC context.’

— NOSHSA submission to the RIS

The peak body sessions in New South Wales and Queensland, indicated a high level of support for Option 1.3B, noting that the current process was potentially acting as a disincentive to good educators entering the sector (New South Wales session comment). One submission stated that the removal of the requirement to complete individual child assessments would result in a direct increase in staff retention rates.

‘C&K reiterates the “My Time Our Place (MTOP)” principle that this service type is focused on ‘leisure and play-based’ experiences which contribute fully to their ongoing development. The service context should be seen as more of an extension of the home environment rather than an extension of the school environment. It is also significantly different from purely early childhood services. In our experience OSHC services have had varying experiences of regulator’s (sic) understanding of their context and have been less clear about the documentation that is expected of their service type.’

— Creche and Kindergarten (C&K) submission to the RIS

Gowrie Australia proposed that individual children’s needs, strengths and interests could be reflected in the overall program. This approach would provide an added flexibility to allow for the uniqueness of the sector. Similarly, Uniting Care Children’s Services supported the proposed option but still saw a need for documentation on an individual child’s participation and outcomes.

It was contended in several submissions that the underlying reasons for the burdensome nature of the individual reporting was varying interpretations of the requirements by regulatory authorities and the broader sector. As such, the proposed option to retrain authorised officers in a manner that better recognises the context of OSHC was broadly supported.

NOSHSA supported the implementation of Option 1.3C for all jurisdictions and Option 1.3B for all states except Victoria, advocating that the primary reason for the levels of confusion and misunderstanding within the sector was due to a rigid and narrow interpretation by individual assessment and compliance officers, ‘evidenced by the positive Victorian experience, where a broader interpretation of the standard has been adopted by the regulatory authority’. However, the NOSHSA submission also cautions that ‘any changes must not be made that devalue the need for

consideration of individual needs ... however, appreciation and consideration of the range and scope of the different forms of evaluations must be considered’.

While the support for removing the requirement for services to prepare individual assessments is high, several submissions expressed strong objections to Option 1.3B, with one submission contending that such an action would ‘undermine the role of education in OSHC’. Additionally, the Victorian peak body feedback was that the current requirements should not be changed.

Australian Community Children’s Services did not feel that any reduction in documentation requirements would result in a system which still adequately captured the required information on individuals. Early Childhood Australia and Community Child Care Association (the Victorian peak body for OSHC) both supported Option 1.3C and called for the retention of individual documentation.

‘A deep understanding of individual children’s needs, strengths and family and cultural contexts is intrinsic to both the NQS and the Framework for School Aged Care. Documentation is an important tool for educators to ensure that recreational program provided at OSHC provides a supportive environment for children’s learning, development and wellbeing.’

— Australian Community Children’s Services submission to the RIS

The Community Child Care Association supports this assessment, stating:

‘Children’s ongoing interests, strengths and abilities need to be documented and understood to inform the development of each OSHC program. To state that individual assessment is not required because the OSHC setting is recreational is like saying play-based curriculum does not need individual assessment. The issues for OSHC services in this area have arisen because educators and authorised officers have needed more clarity and benchmarking about what documentation is useful and required in the OSHC context.’

— Community Child Care Association submission to the RIS

Several submissions suggested that if Option 1.3B is implemented, NQS Elements 1.2.1 and 1.1.4 should also be modified for consistency and to reflect the unique nature of OSHC services. It was also noted that inconsistencies may arise with the MTOP framework which recognises that planning, documenting and evaluating children’s wellbeing is part of an ongoing cycle undertaken by educators. The author of MTOP, Dr Jennifer Cartmel, was consulted on this issue and indicated that regardless of the outcome of this proposal, stronger guidance is required for the sector about what is required, particularly in the OSHC setting.

The survey responses and the written submissions reflected similar levels of support for both options. Approximately three-quarters of survey respondents who answered this question supported changing the current arrangements.

Survey respondents were more supportive of Option 1.3B that services keep documentation about the development of the program (rather than about individual children’s development), than they were of Option 1.3C to retrain authorised officers to better recognise the context of OSHC services. For every one survey respondent who disagreed with the proposed options, approximately four respondents agreed with Option 1.3B and just fewer than four respondents agreed with Option 1.3C. Forty per cent of survey responses to this question were in ‘strong agreement’ with Option 1.3B in comparison to the 31 per cent who were in ‘strong agreement’ with Option 1.3C. Twenty

seven per cent of survey respondents were neutral in their support of Option 1.3C, which was higher than the 14 per cent of respondents who were neutral to Option 1.3B.

In considering respondents' feedback and in further considering the proposed options, state and territory officials found a significant degree of variation across jurisdictions. There was some concern that the emphasis placed on the welfare and learning and development of individual children, that is central to the overall NQA and reflected in the National Law, may constrain the capacity to have a requirement for program level documentation rather than individual child level documentation for school age children. There was also a view that Victoria has been able to implement the current requirements in a way that is apparently less burdensome for service providers, as attested to by the Community Child Care Association (the peak body for OSHC in Victoria).

Table 4 Survey responses on support for change — Reduction in documentation of assessments or evaluations of school age children

Survey options	Survey
Support for retaining the current arrangements (no change)	78 (24%)
Support for changing the current arrangements (change)	241 (76%)
Total responses	319

Assessment of net benefit

OSHC providers have indicated the requirements to document assessments and evaluations of each child can be burdensome, particularly when children attend care infrequently.

Current legislative requirements and administrative guidance about documenting assessments or evaluations of school children have not set clear expectations about procedures that satisfy the requirements. The expectations and advice of some authorised officers have not reflected differences in the delivery of programs for school children and preschool children. The ambiguity in what is required has led to over-documentation, forms of assessment and evaluation which do not impact on the subsequent planning and delivery of programs and tied up experienced staff who are otherwise best placed engaging children in activities.

Implementation Options

If Option 1.3B was implemented, it would be expected that benefits would be achieved through a reduction in regulatory burden for services that provide care to school children due to reduced documentation requirements. It may also assist services to retain staff as they would spend more of their time directly engaging with children. However, the benefits of Option 1.3B need to be weighed against the potential impact of a move away from focus on the individual child. Namely, there is a concern that the removal of the requirement for documentation on individual children's wellbeing, development and learning may result in lower quality service provision and is at odds with MTOP.

It is expected that the implementation of Option 1.3C would result in a net benefit for services due to an ongoing reduction in administrative burden. The likely benefits of further training authorised officers to regulate and assess OSHC services in a manner that better recognises their context include:

- Cost savings for many OSHC services, as there would be a reduction in the documentation evidence expected for individual child assessments, reducing the overall time services direct towards this activity.
- Higher levels of satisfaction among staff, children and families, as assessments would be better tailored towards the unique OSHC context.
- More efficiently targeted assessment processes, resulting in time savings for both services and regulatory authorities and the provision of more constructive feedback to services.

OSHC provider experiences of implementing regulation 74 have varied, for instance, most providers in New South Wales and Queensland consider keeping documentation about individual children's development as unnecessarily burdensome and most providers in Victoria are more supportive of retaining current requirements. To meet the needs of school age children in child care efficiently and effectively, and to respond to the localised differences in approach to the implementation of regulation 74, some flexibility should be given to states to determine whether they will adopt Option 1.3B or to adopt Option 1.3C. This flexibility was supported in NOSHSA's written submission. Regardless of the approach adopted in each state or territory, there should be additional specific guidance materials for both service providers and authorised officers on what is required.

Preferred option

All governments agree planning, documenting and evaluating children's wellbeing and development must be part of an ongoing cycle undertaken by educators of school age children in child care services. Flexibility should be given to separate states and territories to either adopt either Option 1.3B or Option 1.3C in conjunction with the development of specific guidance on requirements in their jurisdiction. Both options present a means of maintaining high quality service delivery without the unnecessary burden of a singular requirement and the associated transaction costs.

PREFERRED OPTION: Alternative option

- **For all jurisdictions, other than NT, Qld and NSW, there be no change to the National Law or regulation 74. Instead develop clear guidance to OSHC (and other services providing care to children over preschool age) and authorised officers on what is appropriate documentation proportionate to a child's pattern of attendance, including examples of the type of documentation be kept.**
- **For NT, Qld and NSW, jurisdiction specific regulations be inserted in Chapter 7 of the National Regulations to provide that for programs for children over preschool age, services will be taken to meet the program documentation requirements for regulation 74, if the documentation provides evidence about the development of the program.**
- **Develop jurisdiction specific guidance materials for both service providers and authorised officers on what is required for a service provider in NT, Qld, and NSW to meet these program documentation requirements.**

1.4. RIS Proposal 1.4 — Significant Improvement Required rating

Options for Significant Improvement Required rating

Option	Description
1.4A	No change
1.4B	Remove the Significant Improvement Required rating, with the quality assessment rating process ceasing where it is determined that there is an unacceptable risk to children's health, safety or wellbeing
1.4C	Retain the Significant Improvement Required rating but amend its definition so that it refers to a rating that may be applied if there is significant non-compliance, rather than where there is unacceptable risk to children

Currently, if a quality area or regulation is not met during a quality assessment and poses an unacceptable risk to the health, safety or wellbeing of children, a service is given a rating of Significant Improvement Required for the quality area and the overall rating. This usually indicates to services that urgent action is needed to address the problem.

However, a regulatory authority must conduct a full assessment of the service prior to determining the Significant Improvement Required rating. As a result, resources are required to both complete the assessment and rating report and take enforcement action to remove the unacceptable risk to children. In addition, concerns have been expressed about the appropriateness of issuing a quality rating that states the service poses unacceptable risk to the health, wellbeing or safety of children.

Consultation findings

*Overall, in consideration of the consultation findings, this proposal for change received a **high** level of support. However, there was no clear preference shown in consultation for Option 1.4B or Option 1.4C.*

The submissions showed a moderately high level of support to change the Significant Improvement Required Rating, with the majority of respondents who addressed this question supportive of change. Two-thirds of those submissions favoured Option 1.4B, to remove the rating, with the quality assessment rating process ceasing where it is determined that there is an unacceptable risk to children's health, safety or wellbeing.

United Voice did not support the proposed changes, or any changes to the rating system, stating that 'the sector has undergone a period of major change and the benefit of any proposed changes to the rating system is unlikely to outweigh the impact of additional change and uncertainty for educators, parents and service providers'.

Comments in the submissions and online comments expressed some frustration at the high level of variety in quality of services rated in the Working Towards category, as this could be a service which had not met many Standards, or had only not met one. In light of this, the Independent Education Union of Australia suggested that the rating be retained (Option 1.4C) to distinguish between services with a history of significant non-compliance and those generally working towards meeting the NQS. However, it is worth noting that only a very small proportion of services (0.10 per cent in June 2016) hold a Significant Improvement Required rating so the decision to retain or remove the rating would not be anticipated to have a large impact on the number of services allocated a Working Towards rating.

Survey respondents' support for changes in this area was less strong compared to most other proposed options, with 40 per cent of survey respondents to this question indicating they are satisfied with the current arrangements.

The survey responses indicated a slight preference for Option 1.4C, to retain the Significant Improvement Required rating. For every one respondent that disagreed with the proposed options, approximately 1.5 respondents were in agreement with Option 1.4B while approximately 2.5 respondents were in agreement with Option 1.4C. Interestingly, however, Option 1.4B received a higher level of 'strong agreement' (23 per cent of respondents) in the survey than Option 1.4C (19 per cent of respondents).

Table 5 Survey responses on support for change — Significant Improvement Required rating

Survey options	Survey
Support for retaining the current arrangements (no change)	127 (40%)
Support for changing the current arrangements (change)	192 (60%)
Total responses	319

Assessment of net benefit

The anticipated benefit of amending the definition of the Significant Improvement Required rating from 'unacceptable risk' to 'significant risk' (in effect a modified Option 1.4C) would be to increase clarity for families. The current definition of the rating level can be confusing for families, as it is unclear why a service that poses an unacceptable risk should be operating.

The regulatory authority would still complete a full assessment of the service prior to determining the rating. The requirement to display the rating also helps parents understand compliance action is being or has been taken to improve service quality and the service is also required to keep a service compliance record that parents can view. Removing the Significant Improvement Required rating may decrease transparency for families.

Overall, given the low costs and potential for benefits, it is expected that a net benefit will be realised through amending the definition of the Significant Improvement Required rating.

Preferred option

Where there is a significant risk to children at a service, the regulatory authority may decide to complete an assessment and grant a rating of Significant Improvement Required, noting enforcement actions would also be undertaken. In other cases, where the regulatory authority suspends the rating assessment it may exercise one of the following enforcement actions:

- Suspend or cancel provider approval or service approval
- Issue a compliance notice to the approved provider
- Issue an emergency action notice
- Undertake emergency removal of a child or children from a service.

PREFERRED OPTION: Alternative option

Retain the Significant Improved Required rating but amend the definition so that the grounds refer to 'significant risk' to children, rather than 'unacceptable risk'.

No change to the powers to suspend a rating assessment at section 137.

1.5. RIS Proposal 1.5 — Exceeding the National Quality Standard rating

Options for Exceeding the National Quality Standard rating

Option	Description
1.5A	No change
1.5B	To be rated Exceeding the NQS at the Quality Area level, all standards in the Quality Area need to be rated Exceeding the NQS <i>This option is linked to 1.1B</i>

Under the current system, achieving a rating of Exceeding the NQS (Exceeding) for a Quality Area requires at least two standards in that quality area to be rated as Exceeding, with no standards rated as Working Towards the NQS. This means:

- for Quality Areas 2, 3, 6 and 7, only two of three standards need to be rated Exceeding for the overall Quality Area to be rated as Exceeding; and
- for Quality Areas 1, 4 and 5 all standards need to be rated Exceeding.

As mentioned in the discussion of RIS Proposal 1.2, some providers perceive the operation of the current assessment and rating system to be complex and administratively burdensome. In the draft revised NQS in the Consultation RIS (at [Appendix E](#)), all Quality Areas have two standards excluding Quality Area 1 — Educational Program and Practice, which has three standards. Having more standards for Quality Area 1 is considered appropriate given the breadth of service operations which are being assessed, and the importance of this Quality Area to children's outcomes.

On the basis that the draft revised NQS retains only those elements and standards essential to service quality, and to ensure Quality Area 1 continues to have suitable weight within the rating system, one option is to require all standards in a Quality Area to be rated as Exceeding the NQS for the Quality Area to be rated Exceeding. This option would simplify the calculation of the Quality Area rating for Exceeding in a way that is clearer for services and families. Other options have not been put forward on the basis that each of them is likely to add complexity to the process of determining a rating for Exceeding with no commensurate benefit.

It is noted that this option is contingent on the introduction of a revised NQS, as outlined in Decision RIS Proposal 1.1.

Consultation findings

*Overall, in consideration of the consultation findings, this proposal for change received a **high** level of support.*

Approximately 80 per cent of written submissions that addressed the proposed options were in support of Option 1.5B. Submissions in support of Option 1.5B primarily cited that the change would

increase the transparency of the ratings process, given the perception that the current system of calculating the Exceeding rating is overly complex. Further, consultation feedback indicates that this option could be fairer than the current system because it is consistent with how the Working Towards rating is calculated. It was also suggested that to maintain a level playing field, any changes to the ratings should not be implemented until after all services have been assessed.

Those who did not support Option 1.5B either offered no comments or objected to making any changes to the ratings system at this time, as the sector has recently undergone a period of major change.

As demonstrated in the table below, survey responses were more divided than written submissions, with only 55 per cent of those who answered this question advocating for change. When asked specifically whether they agreed or disagreed with Option 1.5B, however, support was more positive. For every one survey respondent who disagreed with the implementation of the option, approximately two survey respondents agreed. Approximately 24 per cent of survey respondents to this question strongly agreed with Option 1.5B, compared with 15 per cent who strongly disagreed.

Table 6 Survey responses on support for change — Exceeding the National Quality Standard Rating

Survey options	Survey
Support for retaining the current arrangements (no change)	143 (45%)
Support for changing the current arrangements (change)	176 (55%)
Total responses	319

Assessment of net benefit

There are no ongoing costs associated with the implementation of Option 1.5B as no additional actions will be taken during the assessment and rating process. Conversely, benefits are expected to accrue through increased clarity to services and families, resulting in a net benefit to the sector. This option complements the revision of the NQS, as outlined in Proposal 1.1.

Preferred option

The expected net benefit and the supportive consultation feedback render Option 1.5B the preferred option. Implementation of Option 1.5B would coincide with any amendments made to the NQS as a result of Proposal 1.1.

PREFERRED OPTION: Option 1.5B

To be rated Exceeding the NQS at the Quality Area level, all standards in the Quality Area need to be rated Exceeding the NQS.

This option will be implemented in conjunction with the revised NQS.

1.6. RIS Proposal 1.6 — Excellent rating

Options for the Excellent rating

Option	Description
1.6A	No change
1.6B	Remove the Excellent rating

The Excellent rating administered by ACECQA recognises services that are leaders in the sector. It aims to drive sector-wide quality improvement and promote the aspirational features of the NQF. The 2015–16 application fee is \$213 for small services, \$426 for medium services and \$640 for large services. As of 30 June 2016, ACECQA has awarded the Excellent rating to 49 services (0.4 per cent of quality rated services). Services that have received an overall rating of Exceeding the NQS are eligible to apply to ACECQA to be considered for the Excellent rating.

Sector feedback suggested that the application process and fee may discourage services from applying for the Excellent rating even where they are eligible. In addition, there is feedback that some of the resources required to manage this process could be better targeted at assisting services which do not currently meet the NQS to improve their service delivery.

Furthermore, there is perceived unfairness that some services can apply for and be awarded the Excellent rating, when other services have not yet been rated and are therefore not eligible to apply (although it should be noted that this may be less of an issue by the time any changes to the NQF are made based on the outcomes of the RIS process, as more services may have been assessed and rated by that time).

However, removing the Excellent rating may reduce the incentive for services who demonstrate high quality practice to become sector leaders and it is noted that recognition of excellence is a feature of many quality systems. Therefore, there is also an option to retain the Excellent rating. Other options have not been explored on the basis that they are likely to add to the complexity to the process of determining an Excellent or increase regulatory burden with no commensurate benefit.

The Consultation RIS explored the option of removing the Excellent rating, with services that achieve a level of quality above the NQS continuing to be recognised through the Exceeding NQS rating.

Consultation findings

*Overall, this proposal for change received a **mixed** level of support.*

Responses to proposed options were divided, with just over half of the submissions which addressed the options stating they would prefer the Excellent rating to be removed. The submission from ELAA highlighted this division of opinion amongst their members:

‘A number of services argued that the process was perceived as elitist and was not consistent with the philosophy underpinning the NQF ... other ELAA members believe that a quality system such as the NQF should also be about aspiring to excellence and that the Excellent rating was an important part of this’.

— ELAA submission to the RIS

Those in support of removing the Excellent rating primarily noted that the current system of applying for the rating was expensive and time consuming, so that only services with sufficient resources could apply, creating inequities in the system. Others contended it is unfair that only services with a rating could apply for and be awarded an Excellent rating. It was also suggested that in the event that the Excellent rating is retained, the awarding of the rating should be postponed until the conclusion of the first assessment round, to avoid giving some services a competitive advantage through being able to advertise the rating before other services have been assessed. The mechanism to award an Excellent rating, however, is in the National Law. The date of effect of changes to the National Law arising from this Review will be around the same time as the conclusion of the first assessment round, by which time this issue will have receded.

It was noted in public consultation sessions in Queensland that there was some degree of confusion about the Excellent rating and the application process, particularly in relation to the purpose of the rating and how it differed from the Exceeding rating. Nationally, there was strong support in the majority of the state peak body consultation sessions for the removal of the Excellent rating.

However, several submissions contended that the prospect of gaining an Excellent rating was inspiring leaders in the sector and recognised the hard work that it took to achieve those desired levels of quality. One submission also noted that the work conducted to achieve the rating was formative in strengthening community ties to the service. It was also suggested in one submission that the Excellent rating distinguishes between those who merely meet the NQS and those that are sector leaders, and that this could be further emphasised through a re-directing of the assessment criteria towards an increased focus on leadership. Another submission supported this, stating that services awarded the rating could become sites for modelling high quality practice.

The majority of those in support of retaining the rating also commented that the application process should be simplified to reduce current inequalities in the system, particularly advocating that the fee be removed. Several submissions proposed an alternative option which would be to remove the current process for obtaining an Excellent rating and instead award any service that achieved Exceeding in all seven quality areas an Excellent rating. This would be free of charge and occur through the single assessment process.

It was also noted that receiving an Exceeding rating was an excellent achievement and incentive enough for services to do well.

Similar to the submissions, the survey responses also highlighted divided opinions on this issue, with 36 per cent of survey respondents to this question indicating they would prefer the Excellent rating to be retained. The survey responses to this question indicated that for every one respondent who disagreed with Option 1.1B, approximately 1.5 respondents agreed. Additionally, 33 per cent of survey respondents to this question were in strong agreement with the proposed option, in comparison to 15 per cent who were in strong disagreement.

Table 7 Survey responses on support for change — Excellent rating

Survey options	Survey
Support for retaining the current arrangements (no change)	116 (36%)
Support for changing the current arrangements (change)	203 (64%)
Total responses	319

Assessment of net benefit

The key benefit of removing the Excellent rating is that it would be less costly for services; for example, it would eliminate the cost involved in applying for the rating — and the rating system would be simpler overall.

Removing the Excellent rating, however, may reduce the incentive for services to strive for the highest quality of service delivery, due to the loss of national recognition associated with being awarded an Excellent rating.

Removal of the application fee would remove a barrier to ensuring ratings reflect actual service quality.

It is unclear whether there would be a net benefit from removing the Excellent rating, given that a simpler and less costly system may or may not outweigh the reduced incentive for services to strive for excellence in service delivery.

An alternative option of an Excellent rating being awarded to services that achieve an Exceeding rating in all quality areas does not necessarily involve services acting as leaders in the sector and the community.

Preferred option

The stakeholder feedback and the assessment of net benefit highlight a tension between reducing regulatory burden and inequality in the system, addressed through the removal of the Excellent rating, and the potential loss of incentive for leadership in the sector.

In light of this, it is recommended that an alternative option be considered in which the Excellent rating is retained, however the fee is removed and applications are limited to services rated Exceeding in all quality areas. This option removes the inequality inherent in the current system through the removal of the application fee.

Consistent with current practice, services already rated as Excellent should only be re-rated after another assessment. *It is noted that these ratings only apply for three years, unless revoked sooner.*

PREFERRED OPTION: Alternative option

Retain the Excellent rating, remove fee and limit applications to services rated Exceeding NQS in all quality areas.

This option will be implemented with the introduction of the revised NQS.

1.7. RIS Proposal 1.7 — Ensuring ratings accurately reflect service quality

Options for ensuring ratings accurately reflect service quality

Option	Description
1.7A	No change
1.7B	Remove the overall rating and rely on the seven quality area ratings to indicate service quality
1.7C	Retain the current requirement that all elements must be met to achieve an overall rating of Meeting NQS, on the basis that clarifying or streamlining the NQS will result in ratings that are a more accurate reflection of service quality <i>This option is linked to 1.1B</i>
1.7D	Broaden the application of the current Minor Adjustments Policy ⁴ (but not extending to those areas of the NQS that are not able to be remedied quickly) <i>This option could be implemented together with 1.7B or 1.7C</i>

Under the current process for determining rating levels, a service that does not meet one or more of the 58 elements of the NQS is rated Working Towards the NQS for the relevant quality area *and* receives an overall rating of Working Towards NQS. As at 31 December 2014, approximately 39 per cent of services with an overall rating of Working Towards the NQS had failed to meet fewer than four out of 58 elements (ACECQA, 2014).

Consultation with the sector indicates that this process is perceived as unfair, as it increases the effect of just one element assessed as ‘not met’. The resulting overall rating is seen as not reflecting overall service quality.

Potential options for addressing this are to:

- remove the overall rating and rely on the seven quality area ratings to indicate service quality
 - while the overall rating was introduced to provide a simple indicator of service quality, in some cases it may mislead families as a service with just one element rated as not met in one quality area will have an overall rating of Working Towards the NQS, even if all other quality areas are rated as Meeting or Exceeding the NQS; or
- retain the current requirement that all elements must be met to achieve a Meeting the NQS rating, on the basis that clarifying or streamlining the NQS will result in ratings that are a more accurate reflection of service quality, as there will be fewer elements, all of which are essential to overall service quality (*note that this option is contingent on the option of a simplified NQS being adopted under Proposal 1.1B*); and/or
- broaden the application of the current Minor Adjustments Policy, which allows services to make changes immediately following the service visit (*noting that the policy would not be extended to areas of the NQS that are not able to be remedied quickly*).

⁴ The Minor Adjustments Policy allows the regulatory authority to consider any information about steps taken by the service to rectify matters identified during the rating assessment (regulation 63(2)(b)), prior to finalising a service’s assessment report and overall rating. The regulatory authority may give a provider a short time to make adjustments where they identify an issue that does not pose an unacceptable risk to the safety, health or wellbeing of children, has minimal impact on the quality of the service provided, can be quickly and easily rectified, is not one of numerous other minor matters, and may, if rectified, result in the service receiving a higher rating against a standard.

Consultation findings

*Overall, in consideration of the consultation findings, this proposal for change received a **mixed** level of support. Additionally, Option 1.7B received the highest level of support and it was suggested that Option 1.7D could be undertaken simultaneously.*

The response to proposed options was similar across both surveys and submissions, with approximately two-thirds of respondents across both modes supporting the change. Options 1.7C and 1.7D received slightly less support than Option 1.7B, although almost one-third of submissions noted that Option 1.7D should proceed in conjunction with whichever option is preferred.

Those submissions in support of Option 1.7B noted that there would be increased clarity for services and families with the shift in focus to the seven individual ratings, as opposed to a single rating, which may mask underperformance in certain areas. It was also highlighted that the unique approach and diversity between services would be more accurately captured through the quality area ratings.

Those in support of Option 1.7A or 1.7C, keeping the overall rating, argued that the primary objective of the rating was to ensure that families could easily discern between services and that removing the single overall rating would compromise this. Goodstart Early Learning also contended that a single rating helped to drive a culture of continuous improvement in all areas.

One alternative option that was put forward in several submissions was the introduction of a weighting system for each quality area, similar to that used under the former National Childcare Accreditation Council (NCAC).

There was a moderate level of discussion in submissions and online comments around the high level of variation that falls within the Working Towards the NQS category. The ACA recommended a 'change in the existing policy that one indicator rated as Working Towards reduces the overall result to working towards', contending that this 'is not truly reflective of the positive work that is occurring across all other areas of the service' and that 'with 27 per cent of the sector currently with a Working Towards result failing to meet fewer than four elements, this is a harsh outcome'. The Secretariat of National Aboriginal and Islander Child Care (SNAICC) also supported this notion, stating that such a system would especially disadvantage BBF services (if included in the NQF), which operate in unique circumstances and may be punished for circumstances beyond their control. It was found in public consultation sessions that the Working Towards rating was seen as holding negative connotations, and that further work is required to clearly communicate to parents and the sector precisely what the rating means (and therefore what consideration parents should give to the fact that the service is not meeting all requirements).

Survey responses indicated a moderate appetite for changing the current arrangements, with 63 per cent of respondents to this question supporting change. Option 1.7D to broaden the application of the current Minor Adjustment Policy had the greatest support with approximately seven survey respondents agreeing with this option for every one that disagreed. Approximately two survey respondents agreed with Option 1.7B or Option 1.7C for every respondent who disagreed. Interestingly, however, Option 1.7B had the highest proportion of respondents who stated that they strongly agreed with the option (38 per cent). Twenty per cent of survey respondents strongly agreed with Option 1.7C and 21 per cent strongly agreed with Option 1.7D.

Table 8 Survey responses on support for change — Ensuring ratings accurately reflect service quality

Survey options	Survey
Support for retaining the current arrangements (no change)	119 (37%)
Support for changing the current arrangements (change)	200 (63%)
Total responses	319

Assessment of net benefit

In consideration of the stakeholder feedback on the strength of the overall rating in driving continuous improvement in all quality areas and as a transparency measure to families, it is recommended that the overall rating be retained.

There are not expected to be any costs or benefits associated with Option 1.7C as this is simply an extension of the status quo, albeit using an amended assessment and rating process.

There are expected to be one-off implementation costs for regulatory authorities associated with the broadening of the application of the current Minor Adjustments Policy. Authorised officers will require further training to ensure a consistent regulatory approach to the policy. It is anticipated this will be facilitated by both regulatory authorities and ACECQA, to ensure national consistency in outcomes. There is also the potential for an increase in applications for reassessment if services feel they would be rated as Meeting the NQS, rather than Working Towards the NQS, under the new scope of the Minor Adjustments Policy. This may result in a short term increase in costs for regulatory authorities as they respond to requests for reassessment. It is also noted that the current level of applications is low, so this indicates the costs associated with this potential outcome would also likely be low.

The anticipated benefit accruing from Option 1.7D is primarily improved accuracy of information, resulting in better informed decision making. This change ensures the overall rating is more reflective of the quality of the service and provides for improved comparability. It also maintains the current incentive for services to improve quality in all areas in order to improve their overall rating. There are also potential benefits for services which, under the broadened Minor Adjustments Policy, would be rated as Meeting the NQS rather than Working Towards, potentially resulting in financial benefits for these services as they are more easily able to attract enrolments. These benefits are difficult to quantify and therefore the potential net benefit is unclear.

Preferred option

Retain an overall rating and broaden the application of the current Minor Adjustments Policy. Regulatory authorities and ACECQA would be required to undertake further work in this area to ensure the Minor Adjustments Policy is administered to yield consistent outcomes.

PREFERRED OPTION: Option 1.7C and 1.7D

There will be no change to the overall rating and no change to the current requirement that all elements must be met to achieve an overall rating of Meeting the NQS.

In addition, the application of the Minor Adjustments Policy will be broadened, but not extending to those areas of the NQS that are not able to be remedied quickly.

Regulatory authorities and ACECQA will undertake further work to ensure the policy is applied consistently across jurisdictions.

1.8. RIS Proposal 1.8 — Length of time between assessments

Options for length of time between assessments

Option	Description
1.8A	No change
1.8B	Remove the three year rating cycle policy and commit to more frequent re-rating of lower quality rated services, with no specified maximum period between ratings
1.8C	Remove the three year rating cycle policy and commit to re-rate all services at least once every five years, with more frequent re-rating of lower quality rated services

The current assessment and rating cycle for individual services is an earned autonomy system, where the period between assessment and rating processes is determined by the service's current rating. That is, the higher the rating, the longer the timeframe between assessment and rating processes for that service. Prior to the introduction of the assessment and rating process in the NP NQA, it was anticipated services rated Exceeding the NQS would be assessed every three years, services rated Meeting the NQS every two years, and services rated Working Towards the NQS every year.

However, due to underestimated costs associated with the assessment and rating process and a longer than expected timeframe involved in providing initial ratings for all services, subsequent assessments are not being conducted as anticipated, and there are concerns from governments and the sector about the length of time between quality assessments.

Consultation findings

*Overall, in consideration of the consultation findings, this proposal for change received a **mixed** level of support. The vast majority of peak bodies supported Option 1.8A for no change.*

Approximately 60 per cent of submissions were not in favour of changing the length of time between assessments. Supporting this, written submissions and survey response comments indicate broad support for the current three year cycle, with calls to assess services which achieved lower ratings more frequently. The vast majority of submissions which were supportive of change cited that Option 1.8C, with a maximum time limit of five years between assessments was their preferred option as this option included a maximum timeframe.

At the peak body consultation sessions held in each state, Option 1.8A for no change was the most popular. Those not in favour of change primarily cited that five years between assessments was too long. It was submitted that the quality of a service can change significantly in response to staffing or leadership changes and that under this system a child could attend a service for the entire period prior to schooling and never have their service assessed. As stated by Uniting Care Children's

Services, ‘in the space of five years a service could have completely changed from the first assessment including having a different set of enrolments, staff and management’.

As there is a need to ensure consistency and continuity within the assessment and rating process, Option 1.8B with no maximum time, was also seen as undesirable by many stakeholders.

The Catholic Education Office of Western Australia argued that an increase in time between assessments can only be supported if benefits to the child can be seen as a result from making this change. They state that:

‘The RIS does not suggest a problem with the three year rating cycle in terms of outcomes to children but rather with the ability of the regulatory authority to conduct the visits in a timely manner. This is a resourcing issue for the regulatory authority and should be treated as such.’

— Catholic Education Office of Western Australia submission to the RIS

The majority of submissions that did not support the removal of the three year assessment and rating cycle did state that they supported a more frequent assessment of services rated at a lower quality. In this regard, while the consultation process revealed that Option 1.8A had the highest level of support, there were elements of Options 1.8B and 1.8C which also appealed to stakeholders. The shared component of Options 1.8B and 1.8C, to increase the frequency of assessments for services rated low quality, received high levels of support in submissions and public consultation sessions. However, there was not support in the submissions for an increase in the length of time between assessments or an indefinite timeframe. From the consultation, it can be inferred stakeholders wished to retain the frequency of re-assessment based on the principle of earned autonomy.

As a point of difference to the submission responses, 59 per cent of survey respondents to this question were supportive of a change to the current arrangements. Similar to submissions, however, Option 1.8C was more highly favoured by survey respondents than Option 1.8B. For every one respondent that disagreed with Option 1.8C, approximately 2.5 agreed. In contrast, Option 1.8B had a similar number of respondents disagree with the option than agree with it. Only 18 per cent of survey respondents strongly agreed with Option 1.8B, while 30 per cent strongly agreed with Option 1.8C.

Table 9 Survey responses on support for change — Length of time between assessments

Survey options	Survey
Support for retaining the current arrangements (no change)	132 (41%)
Support for changing the current arrangements (change)	187 (59%)
Total responses	319

Assessment of net benefit

The primary benefit of the options 1.8B and 1.8C would be more frequent assessment may drive more rapid quality improvement in services with lower quality ratings, ensuring the flow on effects to children’s outcomes are realised sooner. However, more frequent assessment can only occur with additional funding. The introduction of a more flexible risk-based system, based on earned autonomy, could see a more efficient allocation of resources in regard to the assessment and ratings process. An additional benefit associated with a more frequent re-rating of services with lower quality ratings would be the added incentive for services to address areas in need of improvement.

This would be anticipated to result in a more timely improvement of service quality and increased outcomes for the safety and wellbeing of children.

Given the unquantifiable nature of the benefits associated with the implementation of the change options, the net benefit is unclear.

Preferred option

While options 1.8B and 1.8C were canvassed in the Consultation RIS, in subsequent negotiations between the Australian Government and state and territory governments on the National Partnership on the National Quality Agenda for Early Childhood Education and Care – 2015-16 to 2017-18, all Parties agreed while it is expected that all services will be assessed and rated every three years, performance for payment purposes will be measured against a benchmark of 15 per cent of services, as a percentage of the number of services in each State at 30 June 2015. This measure gives regulatory authorities some flexibility in prioritising their work to ensure the objectives of the NQF are met.

PREFERRED OPTION: Alternative option

No change. Expectations of the frequency of assessment and rating of services against the National Quality Standard remain consistent with the terms of the National Partnership.

2. Removing Supervisor Certificates

The problem to be addressed

A supervisor certificate allows a person to consent to be either (1) the nominated supervisor of a service or (2) a certified supervisor placed in day-to-day charge of a service in the absence of the nominated supervisor and approved provider. The supervisor certificate concept was implemented as a mechanism to ensure appropriate skills and experience for nominated supervisors and persons placed in day to day charge.

Extensive consultation with the sector through the ACECQA Forum, National Children's Services Forum and with regulatory authorities has identified that the supervisor certificate application process is considered burdensome and duplicates the role of providers in determining who is suitable to supervise their service/s. Assessments of applications rely on paper-based evidence and do not guarantee a uniform measure of capability to manage a service. The application process also does not replace the need for providers to make their own assessment of a person's suitability to supervise a service, particularly given the diversity of size and types of services.

Prior to 1 June 2014, individuals were required to apply to the regulatory authority to receive a supervisor certificate and pay a \$30 application fee. The regulatory authority assessed applications to ensure that minimum requirements for qualifications, experience and management capability were met, and that the applicant was a fit and proper person to supervise a service.

Following changes to the National Regulations on 1 June 2014 (apart from in Western Australia), regulatory authorities may now issue a third type of supervisor certificate, known as 'service supervisor certificates'. Service supervisor certificates are not issued to a particular person but may apply to any person working at the service who has been identified by the approved provider as responsible for the day-to-day management of the service, exercising supervisory and leadership responsibilities for part of the service, or a FDC co-ordinator. This means most people no longer need to apply for an individual supervisor certificate and do not need to pay the \$30 application fee. This change was introduced to minimise paperwork associated with supervisor certificates, while further measures were developed to reduce administrative burden for providers and educators. Note that service supervisor certificates do not currently apply in Western Australia.

The other two types of supervisor certificates continue to apply in all states and territories:

- **Individual supervisor certificates** — these are still valid and individuals are still able to apply to the regulatory authority if they wish (noting that individuals in Western Australia are still required to apply for an individual supervisor certificate).
- **Prescribed class supervisor certificates** — the regulatory authority may grant a supervisor certificate, without receiving an application, for certain classes of people as set out at regulation 49, such as a school principal.

While the introduction of service supervisor certificates go some way to reducing the regulatory burden for services and staff, the supervisor certificate process is embedded in the National Law. Some states and territories have reported that they continue to receive applications for individual supervisor certificates, even though they are no longer required in the majority of cases due to the introduction of service supervisor certificates. The application process is established in the National Law and was not affected by changes to the National Regulations. For example, service approval applications still require the details of a person with an individual or prescribed class

supervisor certificate, or who has applied for an individual supervisor certificate, who will be the service's nominated supervisor (section 44, regulation 24).

2.1 RIS Proposal 2.1 — Removing supervisor certificates

Options for removing supervisor certificate requirements

Option	Description
2.1A	No change
2.1B	Amend the National Law to remove the requirement for supervisor certificates

It has been proposed that supervisor certificate requirements be removed altogether, as the current supervisor certificate concept is not considered necessary to ensure that an appropriately skilled staff member to oversee the service is present (centre-based service) or available (FDC service). It should be noted that the role of the nominated supervisor would still exist, but that responsibility to determine a person's suitability would rest with the approved provider, not the regulatory authority.

Chapter 9 includes further detail about other proposed changes to supervisors (see Proposals 8.3.1 to 8.3.8). These proposals should be read together to understand the full implications of the proposed changes.

Consultation findings

*Overall, in consideration of the consultation findings, this proposal for change received a **high** level of support.*

Over 90 per cent of written submissions supported the proposed changes to supervisor certificate requirements. While it was generally agreed that the current system was unnecessarily burdensome and needed to be removed, several submissions noted that additional safeguards should be put in place to ensure that removal does not result in unsuitable candidates being placed in supervisory positions. Suggestions included:

- provision of additional guidance and resources to services on how to undertake accurate assessments of suitability for the position of nominated supervisor; and
- a mandatory minimum qualification and/or level of experience for the nominated supervisor.

'Services need to be clear about the requirements and processes for determining who can be placed in day-to-day charge of the service. ELAA members, including cluster managers, have indicated that further guidance and resources are required to assist them to do this. It has been suggested that a knowledge based test that sits alongside the requirements for a Working With Children Check, appropriate qualifications and experience, would assist them to make this determination.'

— ELAA submission to the RIS

The reasoning for not supporting this proposal was primarily a belief that the nominated supervisor should be appointed by an independent body to ensure fitness and suitability.

It was suggested in several submissions that if supervisor certificates are removed, services should receive a refund for certificates already paid for. However, it is not envisaged that the removal of the requirement for supervisor certificates will result in a refund for those already assessed and granted.

Support for the removal of supervisor certificates was slightly lower among survey respondents than written submissions, with approximately two-thirds of respondents to the question supporting a change to the current arrangements. However, when asked specifically whether they agreed or disagreed with Option 2.1B, for every one respondent that disagreed with the option, approximately three agreed. Forty-four per cent of survey respondents strongly agreed with the option for change, compared with 10 per cent who strongly disagreed.

Table 10 Survey responses on support for change — Supervisor certificate requirements

Survey options	Survey
Support for retaining the current arrangements (no change)	83 (33%)
Support for changing the current arrangements (change)	168 (67%)
Total responses	251

Assessment of net benefit

There are not expected to be any material costs associated with the implementation of Option 2.1B, as this will result in the removal of a requirement rather than an increased obligation. In Western Australia, where service supervisor certificates are not available, there may be some transitional costs associated in the updating of policies and procedures.

The key benefit of Option 2.1B is a reduction in administrative burden for both services and regulatory authorities. As stated, while the recent amendments to the National Regulations went some way to reducing compliance burden for the sector, jurisdictions report that they continue to receive applications for individual supervisor certificates in cases where they are no longer necessary. Removing the requirement for supervisor certificates altogether would increase clarity for the sector and result in time and cost savings for services as they would no longer complete unnecessary application forms or pay the \$30 application fee. There will also be savings for regulatory authorities who will not be required to assess applications; however, they will also experience a decrease in revenue through no longer receiving the \$30 fee. As the cost of administering the supervisor certificates was higher than \$30, this is still expected to result in a net benefit for regulatory authorities. In Western Australia, it is expected that these benefits will be greater as all supervisors are still currently applying for certificates.

Preferred option

Option 2.1B is expected to result in a net benefit given the estimated savings to both services and regulators. Additionally, there is a strong stakeholder view that services are best placed to assess the suitability of Nominated Supervisors. As such, the preferred option is Option 2.1B.

PREFERRED OPTION: Option 2.1B

Remove the supervisor certificate requirements from the National Law and National Regulations, to allow decisions regarding the responsible person to be made at the service level.

3. Expanding the scope of the NQF

The problem to be addressed

There are a range of education and care services that are currently excluded from the NQF under section 5 of the National Law and regulation 5(2) of the National Regulations. The services that are currently excluded are described as 'out of scope' services. The 2009 RIS agreed to test the inclusion of other out of scope services that operate in a similar manner in the future. As such, the inclusion of a range of out of scope services was canvassed in the 2014 Consultation RIS (BBF centre-based services, Occasional Care, Mobile Services and ACT Playschools). Most of the out of scope services canvassed operate in rural, remote and/or Indigenous communities or provide specific services for parents with occasional care needs.

Including out of scope services under the NQF could aim to ensure those services operate under the same quality expectations and requirements as other similar services, and provide families with the same surety regarding high quality care.

In some jurisdictions, regulation of out of scope services largely mirrors the National Law and National Regulations or have their own legislative requirements to ensure the health, safety and wellbeing of children in care.

A proportion of out of scope services are currently not required to operate at a level of quality commensurate with services covered by the NQF; for example, space requirements, staff to child ratios and qualification requirements for educators.

In cases where there is no regulation, there may be no formal mechanism for monitoring or addressing poor practice. While there is variability across jurisdictions, monitoring in these cases generally focuses on health and safety issues rather than child development outcomes that are the focus of the NQF. Further, BBF services typically provide education and care to disadvantaged children who particularly benefit from participation in quality education and care in terms of improved educational and developmental outcomes. BBFs currently fall under state based regulation in most but not all jurisdictions.

Overall, the consultation findings indicate support for the inclusion of out of scope services in the NQF. Submissions, online survey comments and online comments all supported the principle that all children, regardless of location or situation, should be able to access high quality services. It is important to note, however, that only two written submissions were received from nominated out of scope services. Further, and notwithstanding support for the principle, many parties also noted that the process of inclusion would need to be handled carefully and in close consultation with the affected services. Resourcing, professional development and transitional support would also be important. It was made clear that rural and remote services, mobile services and services caring particularly for vulnerable children must be assessed in a manner that recognises the unique circumstances of their operation, e.g. in a culturally appropriate manner and reflecting the communities they service.

3.1 RIS Proposal 3.1 — Additional services to be included in the NQF

Options for additional services to be included in the NQF

Option	Description
3.1A	No change
3.1B	Include BBF centre-based services, occasional care services (excluding those provided for parents attending conferences, sport and leisure activities or shopping), playschools and mobile services that are not currently regulated in the NQF
3.1C	Include BBF centre-based services, occasional care services (excluding those provided for parents attending conferences, sport and leisure activities or shopping), playschools and mobile services that are regulated under another children's services law in the NQF
3.1D	Include all BBF centre-based services, occasional care services (excluding those provided for parents attending conferences, sport and leisure activities or shopping), playschools and mobile services in the NQF.

The service types considered for inclusion in the NQF (the nominated out of scope services) are:

- BBF centre-based services that operate in a similar way to centre-based services covered by the NQF
- occasional care services, excluding those that are provided for parents attending conferences, sport and leisure activities or shopping
- playschools in the ACT
- mobile services that provide a service similar to those currently covered by the NQF or similar to other services proposed for inclusion.

The estimated number of nominated out of scope services was more than 750 in 2014. The numbers by state and territory are listed in Table 11.

Table 11 Estimated number of nominated out of scope services by state and territory in 2014

Service Type	Total	ACT	NSW	NT	QLD	SA	TAS	VIC [^]	WA
BBF services*	152	1	18	36	46	21	3	31	14
Occasional care services	519	1	67	0	12	94	28	301	16
ACT playschools	13	13	–	–	–	–	–	–	–
Mobile services [‡]	94	0	58	14	0 [‡]	9	0	6	7

Source: Data request to the Australian Government and state and territory governments (2014).

*This includes the Commonwealth funded BBF services who operate similar to centre-based services and are in receipt of, or contracted to receive, Quality Measure assistance to raise services to NQS levels (physical environment and workforce qualifications).

‡Mobile services are not regulated in Queensland and therefore the Queensland regulatory authority cannot provide any figures for the number of services of this type.

[^] As at 10 November 2014, there were 459 services regulated under the *Victorian Children's Services Act 1996*. The additional services mainly comprise services providing limited hours care, located in sports and leisure facilities.

States and territories currently license or regulate most of the nominated out of scope services.

Table 12 Nominated out of scope services currently regulated by state and territory authorities

Service Type	Currently regulated by which states and territories:
BBF services	All, except SA and NT (noting that Qld and WA do not regulate all BBF services)
Occasional care services	All, except NT
ACT playschools	Only ACT
Mobile services	All, except Qld and NT. The ACT does not have mobile services.

Consultation findings

*Overall, in consideration of the consultation findings, this proposal for change received a **high** level of support, subject to caveats about the timing and manner of inclusion. Option 3.1D received a higher level of support than Options 3.1B and 3.1C. The majority of peak bodies that commented on this proposal were in support of Option 3.1D.*

Clear support was expressed by major stakeholders in the sector and the community through the Consultation RIS process for inclusion of nominated services in the NQF. Some peak bodies and others representing some of nominated out of scope services were more circumspect in their response, with concerns raised about the applicability of the current NQF requirements on service delivery, culturally competent assessment, and the timing and support for implementation. It would appear that individual services that fall within the nominated out of scope categories have participated in the consultation process to a very limited extent, limiting their ability to make informed (or any) comments as to the implications of the proposed options in the Consultation RIS.

Only two out of scope services (both mobile services) made submissions to the RIS⁵. Both commented on Proposal 3.1 with one stating a desire to be included in the NQF. The service noted that inclusion in the NQF would assist in efforts to achieve recognition for quality service delivery and enable parents to assess quality across different services. The service submitted that it is already working towards the NQS within its day to day practices.

The other mobile service which commented on Proposal 3.1 stated they were against the change on the grounds that ‘innovative services ... cannot comply [with] the existing seven standards’. They further stated that ‘mobile BBF services cannot be included in the NQF unless the standards and elements are developed to address the needs of the innovative services (not merely a rehash of the centre driven standards) and that appropriate funds are provided by the Commonwealth’.

It was made clear in many other submissions, particularly from peak bodies, that broadening the scope of the NQF would need to be accompanied with further resourcing to transition the newly included services into the NQF. This resourcing would be expected to cover: assistance in raising the services up to a minimum standard as required; training of authorised officers to recognise the unique characteristics of these non-mainstream services and how this influences the assessment and rating process; and perhaps a review of how appropriately the outcomes-based NQS can be applied to services operating under unique circumstances (such as mobile services).

⁵ One service working exclusively with children with disability also made a submission, but it is a service type that is not proposed to be included in the NQF at this current time.

'Some further elements of the NQS may need to be revised to suit the contextualised needs of these additional service types. In addition, there will need to be additional support to ensure the cultural literacy of assessors to enable culturally appropriate assessments of services to be made.'

— Creche and Kindergarten submission to the RIS

Application of the NQS was specifically addressed in a submission by SNAICC. SNAICC supported Option 3.1D in principle but highlighted concerns about cultural issues with implementation, noting that further consideration must be given to these issues for its effective implementation.

'SNAICC believes that consideration of the inclusion of BBF services must begin with the question of whether the National Quality Standard is culturally competent, and how they (sic) could be applied to Aboriginal and Torres Strait Islander services in a culturally - appropriate manner. For the NQF to drive quality in Aboriginal and Torres Strait Islander services, it must be adequately attuned to the needs of Aboriginal and Torres Strait Islander children. This consideration is not addressed by any of the current options being proposed.'

— SNAICC submission to the RIS

Submissions that opposed the proposed changes primarily cited: the large differences in operating environments for non-mainstream services, and whether the NQS would be a useful benchmark given the unique contexts of services; the risk that the inclusion of services into the NQF would raise costs, forcing them to raise fees and potentially compromising the financial viability of services which work with vulnerable children and in remote areas; and that the timing of this move is premature and in the current fiscal environment the services would not be adequately supported to make the transition.

Uniting Care Children's Services, in support of Option 3.1C, noted that 'given the NQF was created in order to promote quality in the sector, Uniting Care does not believe it is appropriate for unregulated services to be included in the NQF at this stage. However, we would like to see all services regulated and brought in to the NQF at some point in the future.' In more general opposition to the proposed option, the ACA noted that they 'cannot envision how they could benefit from becoming part of a system that has stretched the boundaries of the LDC sector, and other sectors, during the implementation period'.

Several submissions (including from Australian Community Children's Services, Early Childhood Australia and the Community Child Care Association) and online comments questioned the exclusion of In Home Care from the proposed services to be included. The former National In Home Childcare Association (now the Australian Home Childcare Association) stated in their submission that they have been actively lobbying for inclusion in the NQF, though also noted that such an inclusion would require significant transition time. The ACA also raised the issue of In Home Care and noted that if it were to be included, the ACA would have grave concerns for nannies also becoming part of the NQF. They stated that 'it will be almost impossible for them to retain independence and work under the requirements of the NQF' and that the ACA 'cannot accept if additional services are added and receive funding under the same financial model as the LDC sector yet are exempt from any of the stringent requirements of the NQF'. Given that In Home Care is a highly specialised service type that, as acknowledged in the feedback will require significant transition time, it was not included in the services proposed for inclusion in the 2014 Consultation RIS.

The survey responses reflect a similar trend to the submissions with strong support for additional services to be included in the NQF. There was fairly similar support levels for each of the options among survey respondents, with Option 3.1D receiving approximately four agreements for every disagreement, while Options 3.1B and 3.1C received approximately 4.5 agreements for every disagreement. However, Option 3.1B received the highest number of responses that strongly agreed with the option (39 per cent), in comparison to Option 3.1D (34 per cent) and Option 3.1C (29 per cent). There were also a significant proportion of respondents that indicated neutral views to the suggested options, 18 per cent for Option 3.1B, 24 per cent for Option 3.1C and 22 per cent for Option 3.1D.

Table 13 Survey responses on support for change — Additional services to be included in NQF

Survey options	Survey
Support for retaining the current arrangements (no change)	64 (30%)
Support for changing the current arrangements (change)	150 (70%)
Total responses	214

Discussion in the public consultation sessions also tended to be broadly supportive of the proposed options to include these additional services in the NQF. However, some participants in Queensland and the Northern Territory expressed reservations. Discussions noted the importance of considering the cultural context of Indigenous services, stating that appropriate support should be provided to ensure these services are able to understand and comply with the NQF. It was also mentioned that an appropriate transition period is essential, in addition to adequate resourcing of regulatory authorities.

Peak bodies in the Northern Territory were supportive of BBF services being included in the NQF but noted that they would need a significant level of support to make a successful transition.

Assessment of net benefit

Preliminary estimates of the number of services proposed to be brought into the NQF, based on 2014 service numbers by service type, are provided in Table 11⁶. Jurisdictions currently license or regulate most of the out of scope services that are proposed to be brought into the NQF under state and territory legislation. Indeed, the only services included in Table 12 that are currently unregulated by state and territory governments are some BBF and mobile services in Queensland, BBF services in South Australia and all of the nominated out of scope services in the Northern Territory.

Costs to services and families

The costs incurred by these services if they were to come under the NQF depend on the conditions under which they are currently regulated — that is, whether services currently out of scope are regulated as per services currently in-scope or whether a more tailored approach is taken.

That noted, any costs associated with the introduction of services to the NQF that are already licenced or regulated by state and territory governments would need to be considered relative to costs currently incurred. While it is likely that an incremental increase in compliance costs would

⁶ It is important to note that these are only preliminary estimates. Further analysis would be required to precisely define and count the potentially affected services.

result, the magnitude of this increase will hinge on the extent to which the NQF adds to the regulatory burden imposed by existing requirements (noting that many of the existing requirements would cease to apply). In light of this, the most significant impact would be for those services that are not currently regulated at all.

In 2013, a Deloitte Access Economics report on the regulatory burden of the NQF estimated various costs to the sector of complying with the legislative and regulatory requirements of the NQF. Findings in this report were based on data collected from a mix of small, medium and large service providers — comprising preschools, LDC, OSHC and FDC — in Victoria and Queensland (four of these services were in remote locations, three were in inner regional locations and the remaining 29 were in metropolitan locations).

The report was unable to estimate a total cost of NQF administrative requirements for services, given that different service sizes, management and approaches to administrative tasks were found to result in significant differences in administrative burden over a year. However, it was possible to estimate a cost of undertaking specific activities for the services surveyed, as outlined in Table 14. It shows both the average hours and average cost for a range of NQF related administrative activities, comparing centre-based and FDC services.

It is important to note that the costs in Table 14 would not represent the additional cost of the NQF to services. A proportion of these costs would still be incurred by services if the NQF did not exist in order to meet jurisdictional regulatory requirements. It is also noted that the services proposed to be included in the NQF operate with unique service delivery models under which the costs below may differ.

Table 14 Non-incremental NQF administrative burden impacts for centre-based and FDC services

Selected activities	Average hours for centre-based	Average cost for centre-based	Average hours for FDC	Average cost for FDC
Initially establishing policies and procedures (once off)	124.2	\$3,490	203.6	\$5,720
Reviewing and updating policies and procedures (pa)	68.1	\$1,912	86.4	\$2,420
Initial design of NQF compliant educational program (once off)	109.1	\$2,883	235.0	\$6,204
Documenting of programs and reflections (per room, pa)	230.9	\$7,205	134.1	\$4,184
Documenting assessments of children's learning (per child, pa)	16.2	\$506	33.9	\$1,057
Documenting and designing initial QIP (once off)	78.9	\$2,110	222.8	\$5,960
Ongoing reviewing and revising the QIP (pa)	206.6	\$5,532	128.6	\$3,440
Provider approvals (per event)	2.1	\$64	1.8	\$60
Service approvals (per event)	1.7	\$54	0.6	\$16

Source: Deloitte Access Economics (2013).

Note: Wage costs relate to 2012 wages. Hours have been converted to cost based on average wage assumptions derived from the ABS' 'Employee Earnings and Hours' release and three job-roles: Director/Teacher in charge (average hourly wage = \$26), Carer/Educator (average hourly wage = \$18) and Administration Officer (average hourly wage = \$21). An overhead percentage of 20 per cent is then applied.

These cost estimates are not directly related to out of scope services and they are based on no further policy change. Nevertheless, it could be assumed that services coming into the NQA under this option may incur costs of a similar magnitude in undertaking the various activities (again, noting that these are not incremental costs and therefore would not represent the increase in costs for services being brought under the NQF — the increase would be a portion of these figures). Of course, as noted above, whether these costs represent a suitable benchmark depends, among other things, on how the NQF is applied to these services.

As well as the costs of complying with the processes of the NQF, significant costs are also likely to be incurred by the nominated out of scope services where the introduction of the NQF requires them to improve on educator to child ratios and educator qualification levels. These costs may also include service reconfiguration costs to comply with the ratios, related to physical environments, including but not limited to floor space, outdoor areas, etc. Limited data exists to guide an assessment of this. In particular, little is known about the educator to child ratios at services that are not currently required to be licensed under state and territory legislation.

How these costs impact families will hinge on the response of services and the interaction between service delivery costs and government funding streams. The costs incurred by families would be impacted to the extent that services experience a net cost increase — that is, the costs incurred under the NQF are greater than those experienced under current regulatory regimes — *and* services respond to this cost increase by increasing their fees. Even then, any fee increases would be partially offset by Australian Government funding where services and families are eligible.

Costs to regulators

Costs would also be borne by regulatory authorities. In 2013, estimates of the total regulatory cost per service under the NQF varied significantly between individual jurisdictions — from \$5,290 to \$13,371⁷. A number of factors were identified as contributing to this variation, including resourcing levels, variation in sector characteristics, remoteness of services and the configuration and operating practices of the regulatory authority. These estimates do not include funding that may be required to support currently out of scope services to transition to operating under the NQF; for example, additional consultation, advice, site visits, forums and resource materials. Together, they provide a broad indication of the costs that may be incurred by regulatory authorities of including new service types under the NQF (recognising that there would be offsets where regulatory practices currently applied to these services cease).

To the extent that certain service types are typically located in remote areas — such as BBF services and mobile services — the cost per service is likely to be closer to the upper range (noting that the Northern Territory has the highest per-service regulatory cost).

Benefits to services and families

The inclusion of BBF centre-based services, specified occasional care services, ACT playschools and specified mobile services in the NQF could lead to a number of benefits. It would provide greater certainty regarding the quality expectations of services across a broader scope of ECEC providers.

⁷ It should be noted that these figures are based on a partially implemented system. Average costs may change once a full cycle of assessment and rating has been completed.

By including services that are currently outside the scope of the NQF, families and children could be assured that the same quality requirements apply to these services.

The magnitude of the benefits generated by the expansion of the NQF may be greater for some service types than others. BBF services commonly provide education and care to children from vulnerable and disadvantaged backgrounds. The quality improvement expected to flow from participation in the NQF would be expected to result in a greater level of benefit for these children, based on research showing that vulnerable children benefit disproportionately from participation in quality early childhood education and care. However, the benefits would only be realised if the costs of BBF services in complying the NQF requirements did not result in fees that present a barrier to access.

Net impact on the services and families

Relative to some of the other proposals put forward in this Decision RIS, inclusion of out of scope services will likely have a high cost to affected individual services. This would vary based on the regulatory environment they currently fall under. Where services are currently regulated within a framework which bears similarity to the NQF, the costs will be more modest. Where services are currently regulated within a framework which is quite different to the NQF — or not regulated at all — the costs will be more significant. The magnitude of this cost cannot at this stage be quantified and, therefore, an assessment of net benefit cannot be conducted.

However, with this cost would come benefits in the form of improved quality among currently out of scope services (to the extent that they currently fall below the standards of the NQF and/or the NQF drives quality improvement over time) and improved education and care outcomes for children attending these services (including some of the community's most vulnerable).

Preferred option

Taking into account the sector feedback that expanding the scope of the NQF requires further consideration, it is proposed to retain the existing scope of services covered by the NQF.

Any future consideration of bringing out of scope services under the NQF would require:

- a) clarification of definitions of services included and excluded from the NQF
- b) the nature and timing of regulatory requirements, including the need for transitional provisions
- c) the nature of quality standards, including culturally competent assessment practices
- d) residual state and territory legislation and regulation
- e) adequate funding to the affected services to support a smooth transition to the NQF
- f) adequate funding to regulatory authorities and ACECQA to support implementation and ongoing regulation.

Existing state and territory legislative and regulatory requirements governing the nominated services would continue (where they apply), unless a separate process for changing the requirements is undertaken by a state or territory government.

Current BBF services that do not receive Child Care Benefit will continue to be excluded from the NQF regardless of changes to their Australian Government funding arrangements in the future. Services will also not be subject to the NQF that receive core operational funding through the Indigenous Advancement Strategy, and which are not approved to operate under the NQF.

PREFERRED OPTION: Option 3.1A — No change

Retain the existing scope of services under the NQF. Further work on the costs and benefits associated with expanding the scope of the NQF would be required before a decision could be made to bring out of scope services under the NQF.

3.2 RIS Proposal 3.2 — Application of assessment and rating processes to additional services

Options for application of assessment and rating processes to additional services

Option	Description
3.2A	Additional services included in the NQF are assessed and rated in the same way as others currently covered by the NQF <i>This option is linked to 3.1B, C & D</i>
3.2B	Additional services included in the NQF are subject to compliance monitoring only, with assessment and rating processes to be considered further in the next review of the NP NQA <i>This option is linked to 3.1B, C & D</i>

If a decision was made to include out of scope services in the NQF they would need time to adapt to the new regulatory requirements, including the assessment and rating process. Appropriate transition arrangements for assessment and rating of new services brought into the NQF would need to be put in place. *(Note that this proposal is contingent on the proposal of additional services being included in the NQF being adopted – refer Proposal 3.1).*

Consultation findings

Overall, in consideration of the consultation findings, **Option 3.2A was more highly favoured.**

In the discussion of whether the nominated out of scope services should be subject to compliance monitoring only, or assessed and rated in the same way as others currently covered by the NQF, the majority of respondents in both the survey and submissions (noting only a few were directly affected) supported new services being subject to the same assessment and rating process (Option 3.2A).

While support for the same assessment and rating process across the NQF was high, this came with a selection of caveats outlined in written submissions. It was noted that there is a large variety in capacity in the services that would potentially come into scope — with some services immediately ready for an assessment visit and some services needing additional time and support to reach that level. Transitional arrangements would also be crucial for services operating in states which do not have existing standards for out of scope services.

The two mobile services which offered comments on the proposed options both expressed a preference for Option 3.2B — that is, for the services to be subject to compliance monitoring only. Again, it was reiterated that such compliance monitoring would need to be based on Standards developed with appropriateness to the context of mobile service delivery. However, it is noted that because the standards are outcome-based, they are already able to be interpreted for different contexts.

One submission suggested an ‘opt in’ approach, which would result in services being assessed on compliance primarily, but with the option to be assessed under the NQF if they thought it would be

beneficial. SNAICC proposed that the additional services be subject to one trial assessment, at the conclusion of which the service would receive targeted support to make up shortfalls. This assessment could be made public or left private, depending on the service's wishes. SNAICC believed that delaying full assessment until the next review prejudices those services which are ready and willing to be assessed earlier and risks leaving the BBF services further behind.

Twenty-nine per cent of survey responses strongly agreed with Option 3.2A, while 14 per cent strongly agreed with Option 3.2B. Similarly, for every one disagreement with Option 3.2A there were approximately 2.5 agreements. This ratio was lower for Option 3.2B, with only approximately 1.5 agreements per disagreement.

Assessment of net benefit

The option of requiring out of scope services that are brought under the NQF to participate in assessment and rating would lead to additional costs for these services. Table 14 shows that the average cost of undertaking assessment and rating activities for centre-based services ranges from \$2,110 to document and design a QIP, to \$5,532 per year to undertake ongoing review and revision of the QIP. Depending on the implementation design of assessment and rating, this cost may vary⁸.

However, the net cost incurred by regulated services coming in-scope is likely to be less than these figures, as they do not represent the *additional* cost of the NQF to services. That is, services would already be incurring some level of compliance costs if currently regulated, and the elimination of these costs would serve as a partial offset to the costs associated with meeting the NQF.

An alternative option to full assessment and rating for out of scope services is to be subject to compliance monitoring only. It is anticipated that this would be similar to the current practices of state and territory regulatory authorities for those services which are not in scope of the NQF, and would impose less regulatory burden upon the sector. However, compliance monitoring may not lead to the same level of quality related benefits noting quality outcomes for children are a key driver for the NQF and achieved through a full assessment and quality rating process.

In terms of costs to regulators, the average per-service total regulatory cost for services that were assessed and rated in 2013 was estimated to range from \$5,300 to \$13,600, with assessment and rating accounting for around 42 per cent of total regulatory authority effort (Deloitte Access Economics, 2014). The adoption of compliance monitoring would be a lower cost option for states and territories. However, there would be additional costs for regulatory authorities for those out of scope services which are currently not regulated. By way of context, monitoring and compliance was found to account for, on average, 10 per cent of total regulatory effort in 2013 (Deloitte Access Economics, 2014) based on an average of 0.8 visits per service per annum.

PREFERRED OPTION: Alternative option

No change. Additional services are not being included in NQF.

⁸ Note that one policy option put forward in this RIS is for a simplified draft National Quality Standard, which may also reduce the administrative burden for services.

4. Extending some liability to educators

The problem to be addressed

Under sections 165 and 167 of the National Law the approved provider, nominated supervisor or FDC educator may be liable for failing to adequately supervise children under their care or where they have not taken every reasonable precaution to protect the children from harm or hazard that is likely to cause injury.

The current penalty under these clauses is up to \$10,000 for individuals and \$50,000 in any other case.

In some states there have been instances where staff members at a service have breached section 167 but the regulatory authority has not been able to prosecute or discipline these staff members as they did not fall under a liable category, even though they were directly responsible for the breach.

4.1 RIS Proposal 4.1 — Extending some liability to educators

Options for extending some liability to educators

Option	Description
4.1A	No change
4.1B	Liability under sections 165 and 167 of the National Law to be extended to all educators, for not adequately supervising children under their care or not taking every reasonable precaution to protect the children from harm or hazard that is likely to cause injury, in addition to approved providers, nominated supervisors and FDC educators

In light of breaches of section 167, relating to protection of children and adequate supervision described in section 3.4 of the Consultation RIS, an option was proposed to extend liability under sections 165 and 167 to all educators. This is in response to comments provided by services that suggests without any potential liability or penalty some educators do not take their responsibilities seriously and do not provide adequate supervision of the children in care. This would mean that educators could also be prosecuted for not adequately supervising children under their care or not taking every reasonable precaution to protect the children from harm or hazard that is likely to cause injury, in addition to approved providers, nominated supervisors and FDC educators.

Additional options were not put forward as this proposal addresses a specific issue with respect to educators. Guidance material and other educative approaches have already been utilised and have not proved sufficiently effective in all cases. Some educators may provide inadequate supervision on the basis that they are not liable for any consequences if harm or accidents that could have been prevented had there been adequate supervision.

Consultation findings

*Overall, in consideration of the consultation findings, this proposal for change received a **mixed** level of support. The majority of peak bodies which commented on this proposal indicated support for Option 4.1A, no change.*

Responses to the Option 4.1B to extend some liability to educators were quite divided, with just over half of the written submissions which addressed this issue advocating for no change to the current system, and just over half of the survey responses to the question advocating for change.

Those written submissions in support of the option primarily contended that extending the liability to educators would appropriately distribute accountability, and that children's safety would be increased as a result. For instance, the ACA noted 'the question must be asked — how can an educator take responsibility for a group of children yet not be accountable for that responsibility?' Similarly, Early Childhood Australia supported this option as being 'in the best interests of children' while also noting that should it be implemented, an education campaign would be necessary to ensure that all educators were aware of their obligations under the new provisions.

Submissions that did not support Option 4.1B contended that such a regulation would impose undue responsibility on educators, who are often poorly remunerated and still undertaking qualifications. It was argued that there are many factors in the external working environment that are beyond an educator's direct control and as such, liability should not be attributed to them and should be the responsibility of the provider. The United Voice submission reflects this opinion:

'The proposal to extend liability does not recognise that educators are in a less powerful position to be able to advocate for changes to ratios and room sizes. In extending liability to educators, there is a risk that they will be found liable for circumstances beyond their control.'

— United Voice submission to the RIS

Several submissions noted that the current industrial relation laws governing educators can be used to prosecute purposefully neglectful educators, dismissing the need for a new regulation. Uniting Care Children's Services stated that in incidences of purposeful educator neglect, 'an educator could be disciplined through workplace relations laws or under the service's code of conduct. Supervisors, Managers and Directors are ultimately responsible for ensuring educators behave responsibly and have authority to ensure that staff behave in a professionally correct manner'.

It was also noted that such a regulation would be inconsistent with liability for educators in the school sector. The Australian Education Union questioned the evidence-base or justification of Option 4.1B, stating that the RIS 'points only to "some" states where there have been "instances" of a breach' and that 'this description or analysis does not constitute a sound basis for substantial change in the law or for regulatory intervention'.

Another factor mentioned consistently in submissions was that the introduction of such a regulation would further decrease incentives to join the ECEC workforce, which is already under-resourced. It was also suggested that some of the current workforce would leave.

While some providers agreed with the option to extend liability to educators, and thought that this may increase the level of diligence provided by educators, this was not universal. For instance, C&K, one of Queensland's primary ECEC providers, was concerned about the impact such a move would have on workforce availability and noted further that 'as an approved provider, C&K understands its responsibility to ensure appropriate policies relating to supervision are in place, that educators are properly trained and, if necessary, performance managed if under-performing'.

As stated above, survey responses were more supportive of Option 4.1B than submission responses, with 62 per cent in favour of changing the current arrangements. For every one survey respondent

that disagreed with Option 4.1B, three respondents agreed. Similarly, 35 per cent of respondents strongly agreed with the proposal, compared with 14 per cent who strongly disagreed.

Table 15 Survey responses on support for change — Extension of some liability to educators

Survey options	Survey
Support for retaining the current arrangements (no change)	107 (38%)
Support for changing the current arrangements (change)	175 (62%)
Total responses	282

Preferred option

On consideration of these consultation findings, and the suggestion that the negative impacts may outweigh any positive changes in behaviour by educators as a result of increased liability, it is recommended that Option 4.1A be accepted and no change be made to the liability of educators.

PREFERRED OPTION: Option 4.1A

No change to the National Law or National Regulations. Liability under sections 165 and 167 to remain with the approved provider, nominated supervisor and family day care educator.

5. Changes to prescribed fees

The problem to be addressed

Total fee revenue for regulatory authorities under the NQF was approximately 7 per cent of the total costs of the regulatory system in 2013. It was proposed in the 2014 Consultation RIS that there is some scope for greater levels of cost recovery for regulatory authorities in specific areas of the NQF. There was no intention to move to a ‘full cost recovery model’, either now or incrementally over time, given the significant impact this would have on services and flow on effects to families. However, appropriate fee adjustments would enable more effective regulatory activities and may be able to be implemented with minimal impact on the cost to families utilising NQF approved services, especially given the small proportion represented by prescribed fees in services’ overall costs.

Fee changes require consideration of the economic costs they may impose (noting that the cost to services in payment of the fee represents a transfer from services to regulators, rather than a resource cost to the economy). The main economic costs to consider are:

- any compliance burden associated with the fee transaction
- any costs — or benefits — generated by behavioural change (these may be quantifiable, but consideration of the mechanisms is required)
- whether fees serve to encourage or discourage efficient behaviour
- any flow on effects; for example, if the fees are passed through to parents.

An increase to the annual fee or other fees once services are approved are more likely than the provider approval fee and service approval fee to be passed onto families.

5.1 RIS Proposal 5.1 — Introduce a fee for extension of a temporary waiver

Options for introducing fee for extension of temporary waiver

Option	Description
5.1A	No change
5.1B	Introduce a fee for the extension of a temporary waiver

Temporary waivers can be issued for situations where providers are unable to meet building, environment or staffing requirements for short periods. Sometimes interim solutions to address matters do not work out and providers seek to extend the period of a temporary waiver (for instance, a staff member who is actively working towards an ECT qualification leaves the service 11 months into their course).

The National Law provides for extensions of temporary waivers for up to 12 months each time upon application of the approved provider, with no limit on the number of extensions. While there is a prescribed fee for an initial waiver application, there is currently no prescribed fee for an application to extend a temporary waiver. This means that services that have not addressed the underlying temporary issue can seek an extension without any fee or having to provide a new application. Introducing a fee for extensions would provide additional incentive for providers to address the

underlying issues that were the subject of the first waiver in the time requested in the initial application.

It is therefore proposed that the current fee for an initial waiver application be charged to services who are applying for an extension to temporary waivers (\$106 in 2015–16). Regulatory authorities in each jurisdiction will have discretion to either discount or waive the fee depending on the services' circumstances; for example, regulatory authorities could choose to waive a fee if a service is affected by an unforeseen natural disaster).

Across Australia, there were 712 temporary waiver applications made in 2013–2014, which was a combination of once off temporary waiver applications and extensions of temporary waiver applications. Some jurisdictions have reported up to 10 per cent of waiver applications being waiver extension applications, however, this data is not readily available. In Victoria and Queensland, each application for an extension is treated as a new waiver and is therefore subject to a fee. The total number of temporary waiver applications in these jurisdictions was 336⁹. These have been omitted from the following illustrative calculations:

- Assuming 10 per cent of total temporary waiver applications are related to temporary waiver extension applications and applications remained constant, and an application fee of \$106, this would result in additional total annual fee revenue to regulatory authorities of \$4,028.
- If 20 per cent of total temporary waiver applications are related to temporary waiver extensions and applications remained constant, the additional total annual fee revenue to regulatory authorities would be \$8,056.
- In both cases, the additional total revenue to regulatory authorities would likely decrease over time, as services adjust to the requirements of the NQF and therefore less frequently require temporary waivers.

In summary, the revenue raised is likely to be insignificant in the context of the overall cost of the system — the main benefit will be in sending a price signal for services who may not otherwise be taking all due measures to address the underlying issue that gave rise to the waiver being required.

Consultation findings

*Overall, in consideration of the consultation findings, this proposal for change received a **mixed** level of support. The vast majority of peak bodies which commented on this proposal were in support of Option 5.1A, for no change.*

The responses to Option 5.1B to introduce a fee for the extension of a temporary waiver were not strong in either direction, with both the survey and written submissions demonstrating a generally even split between support and non-support, though the peak bodies favoured Option 5.1A, no change.

⁹ Of these 275 applications were from Queensland and 61 applications were from Victoria.

Written submissions showed that those who supported the change were generally in agreement with the justification provided in the Consultation RIS, that a fee for an extension of a temporary waiver may provide an incentive for services to address the subject issue in a timely manner.

Those who were not in support of introducing a fee cited the financial pressure that many services were already under and that any form of fee increase may result in a need to pass the costs onto families. It was also noted that not all reasons for the need for temporary waivers are within the services' control and therefore, perhaps the fee could be waived for vulnerable services. It should be noted that the ability to waive a fee for the extension of a temporary waiver is included in the proposed change.

As stated, the survey responses were also quite evenly split on the proposed options, with just over half supporting retention of the current arrangements. However, there were double the amount of responses that strongly disagreed with Option 5.1B (24 per cent) than responses that strongly agreed (12 per cent).

Table 16 Survey responses on support for change — Introduce a fee for extension of a temporary waiver

Survey options	Survey
Support for retaining the current arrangements (no change)	97 (54%)
Support for changing the current arrangements (change)	81 (46%)
Total responses	178

Assessment of net benefit

The anticipated benefit of the introduction of a fee to temporary waiver extensions is as a price signal, with services working to comply with the requirement(s) of the National Regulations within the timeframe of the approved temporary waiver to avoid additional cost or possibly action by the regulatory authority to suspend the service approval. This will lead to improved quality outcomes for services and to reduced administrative costs for regulatory authorities.

Ultimately the choice between the status quo and the proposed option depends on whether the service or regulator should be required to bear part of the cost of an extension. Given that the service has the power to prevent an extension in most circumstances by taking action to meet requirements during the waiver period, they are best placed to bear this cost and doing so would provide an additional incentive to reduce the need for an extension.

The incentive for providers to seek extensions to temporary waivers is to enable a service to continue to operate temporarily while not being required to comply with a specified requirement or requirements of the National Regulations or the National Quality Standard. For regulatory authorities, extending a waiver can enable them support the service in developing a more effective plan to meet a requirement in the future.

The cost of an additional fee will be borne by services that require extensions to temporary waivers. While some costs will pass through to parents, the impact per child would be negligible. Given the anticipated costs of this option are minimal, Option 5.1B is expected to result in a net benefit to the sector.

Preferred option

Given the low costs associated with Option 5.1B, and the flexibility to waive costs in the case of vulnerable services where the additional cost may have a negative impact on service viability, it is proposed that a fee be attached to the application for an extension of a temporary waiver at the same level of the existing fee for the original application. It is anticipated that this will encourage a more timely approach by services to rectifying the underlying reason for the waiver, and increase cost recovery for the administration of temporary waiver extensions.

PREFERRED OPTION: Option 5.1B

Amend the National Law to introduce a prescribed fee for an application to extend a temporary waiver. The fee will be the same value as the fee for an initial waiver application.

5.2 RIS Proposal 5.2 — Increase in the provider approval fee

Options for increasing the provider approval fee

Option	Description
5.2A	No change
5.2B	Increase the provider approval fee by 100 per cent
5.2C	Increase the provider approval fee by 50 per cent

The 2015–16 application fee for provider approval for centre-based and FDC services was \$213. The change options proposed in the Consultation RIS were that this fee be increased by either 100 per cent or 50 per cent.

In 2013–14, there were 494 applications for provider approval (ACECQA, 2014). Assuming the same number of applications in 2015–16 and a fee increase of 100 per cent, this would result in a total annual increase in fee revenue for regulatory authorities of approximately \$105,000. A 50 per cent fee increase would result in a total annual increase in fee revenue for regulatory authorities of approximately \$52,500.

Consultation findings

*Overall, in consideration of the consultation findings, this proposal for change received a **low** level of support. The vast majority of peak bodies which commented on this proposal were in support of Option 5.2A, for no change.*

Note: this discussion also applies to Proposal 5.3 and Proposal 5.4 following

The vast majority of written submissions were not in support of Options 5.2B and 5.2C. Many submissions noted that they would support the raising of fees in line with the Consumer Price Index (CPI) but that the proposed increments were unwarranted and too large. It should be noted that the current National Law does provide for fees to increase in line with CPI and ACECQA do this annually. It was submitted by several submissions that the RIS failed to justify the need for fee increases higher than this level or to illustrate how the increased revenue would be utilised to increase service provision from regulators. The Creche and Kindergarten Association Limited (C&K) stated that ‘the policy objective of charging a fee should be transparent’.

Family Day Care Australia (FDCA) submitted that the cumulative impacts of the heightened regulatory environment, the reduction in operational funding from the Australian Government and the proposed fee increases need to be considered. In a context of high fiscal pressure for services, fee increases may be passed onto families and threaten the viability of smaller services and the attendance of vulnerable children. Save the Children’s submission noted that this risk of increased costs to families may have an adverse impact on vulnerable families. They stated that ‘in this case we would argue that attendance for the most disadvantaged children be fully subsidised, through a long-term funding commitment by the Commonwealth Government’.

Several providers contended through submissions that if the primary reason for the fee increase was to dissuade providers from expanding inappropriately, more rigour should be applied to assessing applications rather than unfairly penalising high quality providers.

Following the trend in written submissions, the majority of survey respondents to this question opposed the proposed increase in provider approval fees. The strength of disagreement for a rise of 100 per cent (Option 5.2B) is slightly higher (49 per cent) than for a rise of 50 per cent (Option 5.2C) with 44 per cent of respondents strongly disagreed. Similarly, for every one respondent who agreed with the potential options, 5.5 respondents disagreed with Option 5.2B and four respondents disagreed with Option 5.2C.

Table 17 Survey responses on support for change — Increase in provider approval fee

Survey options	Survey
Support for retaining the current arrangements (no change)	112 (63%)
Support for changing the current arrangements (change)	66 (37%)
Total responses	178

Assessment of net benefit

This assessment of net benefit for raising fees also applies to Decision RIS Proposal 5.3 and RIS Proposal 5.4.

There may be some overall costs as a result of the application of an increase in the provider approval fee to the extent that increased fees contribute to slowing of growth in the sector in an undesirable way. For example, the increase may deter potential providers from entering the market or current providers from establishing new services. Should a provider be discouraged from opening a new service in a currently under-serviced area, this would represent a cost. However, diligent applicants should understand the benefits of operating in an under-serviced area and these benefits could reasonably be expected to outweigh the fee cost.

Where the cost of any fee increase is passed on by services through increased fees charged to parents, this reduction in affordability for families would also represent a cost. However, increases of the magnitude proposed here would be minor on a per-family basis. In addition, research shows that the impact of fee increases on ECEC participation is relatively modest — on average, a 10 per cent change in costs to parents can be expected to produce a 2 per cent change in participation (Gong and Breunig, 2012). Low income households have a higher degree of price sensitivity, as do households with multiple young children, single parents, or parents without tertiary qualifications.

The primary benefit of an increase in fees is accrued by regulatory bodies through improved cost recovery (noting that fees for approvals would still be much lower than the full cost recovery rate) in processing applications for provider approvals, service approvals and regulatory oversight. This will positively contribute to the sustainability of the NQF but as the potential revenue available to regulatory authorities is relatively small in comparison to the overall costs of the system, it will not necessarily reduce the need for additional funding or consideration of cutting costs in other areas (which may in turn impact the quality of regulatory oversight).

There may be a secondary benefit in that those who are dedicated to entering the industry as a quality provider after undertaking sufficient due diligence are more likely to pay the fee, while others who are less suitable are more likely to be discouraged.

The net impact largely depends on whether the behavioural change that the fee changes generate takes the system closer to, or further from, efficiency. There is no compelling evidence that changing the provider approval fee by the amounts discussed in the consultations would have a material impact on applications for provider approval.

Preferred option

In the absence of evidence about the proposed fee increase having an impact on decisions made by providers or making a substantial change to state and territory revenue, Option 5.2A is preferred.

PREFERRED OPTION: Option 5.2A No change

5.3 RIS Proposal 5.3 — Increase in the service approval fee

Options for increasing the service approval fee

Option	Description
5.3A	No change
5.3B	Increase the service approval fee by 100 per cent
5.3C	Increase the service approval fee by 50 per cent

The 2015–16 application fees for service approval, which vary depending on the size of the service, are outlined in the table below.

Table 18 Application fee by service type (2015–16)

	Centre-based service	FDC
Small	\$426	\$640
Medium	\$640	\$640
Large	\$854	\$640

Source: ACECQA, 2015

Assuming the number of applications for service approvals across the sector increases at the 10 year average annual growth rate of 3.3 per cent for centre-based services and 2.7 per cent for FDC¹⁰¹¹

¹⁰ This growth rate was sourced from Australian Government data, determined as the five year average using 2007–2012 financial year service counts.

services (as consistent with the DRIS cost estimate assumptions), there would be 472 applications for centre-based service approvals and 25 applications for FDC service approvals each year. Assuming that the fee for service approval is increased by 100 per cent, this would result in a total annual increase in fee revenue for regulatory authorities of approximately \$318,000. A 50 per cent fee increase would result in a total annual increase in fee revenue for regulatory authorities of approximately \$159,000.

Note: In accordance with ACECQA fee revenue data (2013) it has been assumed that 68 per cent of centre-based services are medium, 16 per cent are small and 16 per cent are large.

Consultation findings

*Overall, in consideration of the consultation findings, this proposal for change received a **low** level of support. The vast majority of peak bodies which commented on this proposal were in support of Option 5.3A, for no change.*

The majority of survey and submission respondents were not in support of an increase in service approval fees. The reasoning provided for these responses in the written submissions was very similar to the opposition to the previous proposal and is detailed in the discussion of Proposal 5.2 above. Reflecting the same pattern, strength of disagreement from the survey responses for a rise in 100 per cent (Option 5.3B) is slightly higher than for a rise of 50 per cent (Option 5.3C).

Fifty one per cent of survey respondents indicated strong disagreement with Option 5.3B, with 5 per cent strongly agreeing with the option. Similarly, 45 per cent stated strong disagreement with Option 5.3C compared to 6 per cent of responses which strongly agreed.

Table 19 Survey responses on support for change — Increase in service approval fee

Survey options	Survey
Support for retaining the current arrangements (no change)	120 (67%)
Support for changing the current arrangements (change)	58 (33%)
Total responses	178

Assessment of net benefit

See discussion under Proposal 5.2 for the assessment of net benefit.

Preferred option

In the absence of evidence about the proposed fee increase having a impact on decisions made by providers or services or making a substantial change to state and territory revenue, Option 5.3A is preferred.

PREFERRED OPTION: Option 5.3A No change

¹¹ ACECQA Snapshot data indicates FDC has had 47 per cent growth in services in 2013-14, 20 per cent growth in 2014-15 and 14 per cent growth in 2015-16.

5.4 RIS Proposal 5.4 — Increase in the annual fee for approved services

Options for increasing the annual fee for approved services

Option	Description
5.4A	No change
5.4B	Increase the annual fee for approved services by 100 per cent
5.4C	Increase the annual fee for approved services by 50 per cent

The 2014–15 annual fees for approved services, which vary depending on the size of the service (but do not vary based on service type), are:

- Small service, \$196
- Medium service, \$293
- Large service, \$389.

It is proposed that these fees be increased by either 100 per cent or 50 per cent.

In 2013–14, annual fees were paid by:

- 13,633 centre-based services, of which it is estimated:
 - 7 per cent were for small centre-based services (less than 25 places)
 - 77 per cent were for medium centre-based services (25 to 80 places)
 - 16 per cent were for large centre-based services¹² (more than 80 places).
- 802 FDC services of which it is assumed all are large¹³.

It was estimated, if the annual fee were to be increased by 100 per cent and the increase was passed on in full to families, the cost per place would be between 7 and 16 cents per week.

Assuming the same number of annual fees in 2014–15 and a fee increase of 100 per cent, this would result in a total annual increase in fee revenue for regulatory authorities of approximately \$4.3 million (ACECQA, 2014). A 50 per cent fee increase would result in a total annual increase in fee revenue for regulatory authorities of approximately \$2.2 million.

Consultation findings

*Overall, in consideration of the consultation findings, this proposal for change received a **low** level of support. The vast majority of peak bodies which commented on this proposal were in support of Option 5.4A, for no change.*

Submissions reflected strong opposition to Options 5.4B and 5.4C, with approximately 5 per cent of those which commented on this option showing support for it. Reasons for this opposition were the same as those outlined in Proposal 5.2, with an added emphasis that such a change would significantly threaten the viability of smaller services in rural areas.

¹² The breakdown of service size for centre-based services is based on a breakdown of LDC services from 2013 CCMS data.

¹³ Available data suggests that at least 48 per cent of FDC services are large; however, specific data on the breakdown of service sizes is at this point unavailable. Therefore, an assumption has been made that all FDC services are large.

Again, calls were made at consultation sessions to only increase the fees in line with CPI levels. Should fee increases be higher than CPI, stakeholders want regulatory authorities to illustrate how the increased revenue would be used.

Options 5.4B and 5.4C, to increase annual fees for approved services, were the least popular of all the proposed options relating to fee changes among survey respondents. Less than 10 per cent of survey respondents to this question agreed with an increase of 100 per cent for annual fees, and agreement with a rise of 50 per cent was only slightly higher.

For every one agreement with Option 5.4B, 8.5 respondents disagreed with the option. Similarly, for every agreement with Option 5.4C, 5.5 respondents disagreed with the option.

Table 20 Survey responses on support for change — Increase in annual fees for approved services

Survey options	Survey
Support for retaining the current arrangements (no change)	131 (74%)
Support for changing the current arrangements (change)	47 (26%)
Total responses	178

Assessment of net benefit

See discussion under Proposal 5.2 for the assessment of net benefit.

Preferred option

Consistent with the feedback received, it is not considered increasing the annual fee for approved services is necessary to improve the operation of the NQF and therefore is not being considered at this time.

PREFERRED OPTION: Option 5.4A No change

6. National educator to child ratio for OSHC services

The problem to be addressed

At the time of introducing the NQF there was little available research to support national qualification requirements and/or national educator to child ratios for OSHC and so none were specified in the National Regulations. States and territories that regulated OSHC services included savings provisions under National Regulations (Chapter 7 Jurisdiction specific, transitional and savings provisions). Services operating in jurisdictions that did not regulate OSHC therefore have no specified ratios or qualifications. Some jurisdictions that did regulate OSHC did not have specified ratios or qualifications requirements. While no ratio requirements are currently formally imposed for some services, these services report operating under the broad principles agreed by state and territory governments in 1995, which included a recommended ratio of 1:15.

While there is limited research on this issue, studies broadly link the regulation of staff-to-child ratios with positive quality outcomes in child care settings. In a comprehensive literature review, Huntsman (2008) concluded that ‘... the weight of evidence favours’ the argument that:

...lower child-adult ratios (fewer children per caregiver) are associated with higher process quality; conversely, higher ratios are associated with lower process quality. The connection seems to be stronger for younger; for example, infants — than older children; for example, over three years¹⁴.

Huntsman (2008) associated higher quality care with improved child outcomes such as ‘better language and cognitive development and maths readiness’ as well as ‘better cooperation and compliance, fewer behavioural problems’. This assessment is based on a significant amount of supporting research, including De Schipper et al (2006)¹⁵, Burchinal et al (2002)¹⁶ and (Howes & Smith, 1995)¹⁷.

There is a relative lack of research on the incremental impacts of lowering a ratio or the ideal ratio for specified age groups (OECD, 2012)¹⁸. Huntsman (2008) notes this limitation in the research, stating that there are only three robust studies where process quality before and after a change in ratio have been reported. As such, there is little evidence specifying unambiguously what would be the most appropriate ratio for school age children.

In summary, it is clearly important that children attending OSHC services are subject to adequate supervision, to protect their health, safety and wellbeing. While OSHC services are currently required to provide adequate supervision at all times, the lack of any ratio requirement has led to some uncertainty within the sector about an appropriate educator to child ratio, even after significant guidance material has been developed and made available. In addition, where inadequate

¹⁴ Huntsman, L. (2008), *Determinants of quality in child care: A review of the research evidence*, Centre for Parenting and Research, NSW Department of Community Services.

¹⁵ De Schipper, E. J., Riksen-Walraven, M & Geurts, S.A.E (2006) Effects of child-caregiver ratio on interactions between caregivers and children in child-care centres: An experimental study. *Child Development*, 77 (4), 861–874.

¹⁶ Burchinal, M., D. Cryer and R. Clifford (2002), “Caregiver training and classroom quality in child care centres”, *Applied Developmental Science*, 6 (1), pp. 2–11.

¹⁷ Howes, C. & Smith, E. W. (1995), Relations among child care quality, teacher behaviour, children’s play activities, emotional security, and cognitive activity in child care. *Early Childhood Research Quarterly*, 10, 381–404

¹⁸ OECD (2012), Research Brief: Working conditions Matter, *Encouraging Quality in Early Childhood Education and Care*, available at <http://www.oecd.org/edu/school/49322250.pdf>

supervision is identified as an issue by the regulator, the lack of prescribed ratios makes it more difficult to enforce compliance.

6.1 RIS Proposal 6.1 — National educator to child ratio for OSHC services

Options for a national educator to child ratio for OSHC services

Option	Description
6.1A	No change
6.1B	Introduce a national educator to child ratio for OSHC services

The issue of educator to child ratios for OSHC was raised in feedback from state and territory stakeholder networks, the Productivity Commission’s final report on the Inquiry into Childcare and Early Childhood Learning, the Woolcott Research public consultation report and the Australian Government Department of Education and Training’s consultation report on OSHC conducted by Deloitte Access Economics¹⁹.

In response to this feedback, the option of introducing a prescribed national educator to child ratio for services educating and caring for children over preschool age was included in the Consultation RIS. There is no specific evidence of what ratio would necessarily deliver the best outcomes for children, however the majority of states and territories currently require an educator to child ratio of 1:15.

Consultation findings

*Overall, in consideration of the consultation findings, this proposal for change received a **high** level of support.*

Approximately 95 per cent of submissions addressing the proposed options were in support of Option 6.1B to introduce a prescribed national educator to child ratio for services for providing education and care to children over preschool age. The high levels of support for the introduction of a prescribed national educator to child ratio for OSHC services was stated in many submissions as stemming from a desire for national consistency and to remove any uncertainty around quality of service provision in all sectors and all jurisdictions. However, Goodstart Early Learning noted that ‘with transitional and savings provisions, it’s unlikely that the national ratio would actually be nationally consistent’. The majority of submissions advocated a ratio of 1:15 as nationally accepted.

Discussion in the public consultation sessions in Western Australia indicated support for Option 6.1B, on the proviso that Western Australia maintains its current ratio of 1:13 (or 1:10 if kindergarten children are in attendance). It was felt that if the ratio was changed to 1:15 in Western Australia, this would lead to reduced quality of care. For similar reasons, participants in the Australian Capital Territory tended to be supportive of a national ratio, but wanted to maintain their current ratio of 1:11.

¹⁹ Deloitte Access Economics commissioned by the Australian Government Department of Education *Outside School Hours Care (OSHC) and the National Quality Framework (NQF)*, 2014.

Uniting Care Children's Services noted that such a change would in particular have a positive impact on New South Wales, stating that 'NSW is the only jurisdiction that does not currently have a legislated ratio. Although we know that many OSHC services in NSW operate at a 1:15 standard, this is not currently legally enforceable and puts NSW at a disadvantage to all other jurisdictions.' Notably, participants in the New South Wales sessions were, on balance, supportive of Option 6.1B, as it was stated to remove any current ambiguity. In the public consultation session attended by New South Wales peak bodies, there was support for a 1:15 ratio. It was also noted that this ratio is already common practice in the New South Wales OSHC sector.

Several submissions from Western Australia did not support Option 6.1B as the proposed ratio of 1:15 is lower (each educator cares for more children) than the current state requirements (1:13 unless kindergarten children are in attendance and then 1:10). It was submitted that if Western Australia was included in the scope of a national standard of 1:15, services may raise the number of children in their ratios from the current state requirement 1:13 and quality would be lessened across the state. As such, it was suggested that such a ratio be implemented with exemptions for Western Australia and the Australian Capital Territory, where jurisdiction specific requirements prescribe a higher ratio. Australian Community Children's Services stated that 'whatever ratio is put into place, ACCS supports savings provisions for any States or Territories that are operating at higher ratios'.

NOSHSA supported the introduction of the national ratio and called for implementation without further delay, also supporting the savings clauses for the Australian Capital Territory and Western Australia. In addition, NOSHSA stated that it 'is of critical importance that the risk management system of decisions regarding excursion ratios remain, with more detailed guidelines on planning for excursions'.

The Community Child Care Association, which is the Victorian peak body for OSHC, strongly supported the introduction of the ratio while also calling for the removal of any provision for single staff models of operation in centre-based care. They also proposed a higher ratio of 1:11 for a group size of 22 children, with a ratio of 1:15 for additional children.

The high levels of support for Option 6.1B were also found in the survey responses, with over half of the respondents to this question stating they strongly agreed with the proposed change. For every one disagreement with Option 6.1B, eight survey respondents agreed with the option.

Table 21 Survey responses on support for change — National educator to child ratio for OSHC services

Survey options	Survey
Support for retaining the current arrangements (no change)	38 (22%)
Support for changing the current arrangements (change)	138 (78%)
Total responses	176

Assessment of net benefit

Option 6.1B would formalise a long held guideline that has been widely accepted and adopted as the norm for the care of school age children and as a result the magnitude of the change across Australia will be minor.

The primary benefit of introducing a nationally consistent educator to child ratio for OSHC services is to clarify a definitive minimum benchmark for providers and regulators. For services that do not meet the new 1:15 ratio currently, it is anticipated the quality of their delivery will improve. As the overwhelming majority of services already operate at this ratio, or higher, there is anticipated to be little change or impact on the sector.

The specific net benefit associated with the adoption of Option 6.1B is difficult to quantify given the lack of data regarding the number of services which would be required to increase their ratios, and hence be exposed to a cost increase.

Table 22 shows the educator to child ratios currently imposed across the states and territories. As can be observed, with the exception of New South Wales, all states and territories currently impose a ratio of 1:15 or higher (fewer children per educator).

Table 22 Jurisdiction comparison: OSHC ratio requirements

	ACT	NSW	NT	QLD	SA	TAS	VIC	WA
Educator to children over preschool age	1:11	None	1:15	1:15	1:15	1:15	1:15	Generally 1:13 or under*

Source: Productivity Commission 2014 p. 279.

*Different ratio requirements depending on number of children attending a session.

Table 23 below estimates the actual ratio that services operate at, on average, in each jurisdiction. On this basis the data suggests that on average the sector already operates at a ratio of around 1:11 based on data collected through the 2013 Early Childhood Education and Care Workforce Census and Child Care Management System (CCMS) data sets (see Table 7.3)²⁰. This would suggest that the introduction of a national ratio of 1:15 would result in a relatively low overall cost as the majority of services are already working above this average.

Table 23 OSHC educator to child ratio estimates

	Aus	ACT	NSW	NT	QLD	SA	TAS	VIC	WA
Educators (staff)	16,272	722	4,729	239	3,570	1,633	428	4,104	847
Average hours worked per week	12.9	10.0	14.0	20.0	14.0	10.0	15.0	11.0	17.0
Children	211,514	8,263	62,361	2,641	47,251	20,364	4,527	55,885	10,221
Hours of OSHC per week	11.1	10.1	11.8	15.5	12.5	10.1	9.0	9.1	12.9
Estimated number of children per educator	11.1	11.6	11.1	8.6	11.8	12.6	6.3	11.3	9.2

Source: National Workforce Census 2013, CCMS, Childcare and Early Learning — Management Information Summary Data Report 2012 13.

Note: CCMS data is used from 2013 to match the 2013 National Workforce Census

Some services operate at lower educator to child ratios than these averages and therefore could experience additional staffing costs as a result of this proposal. In theory, the only jurisdiction which has some services operating at lower ratios than imposed by a potential national ratio is New South Wales, given that it is the only jurisdiction that does not currently have a mandated ratio. For these services, the main cost would be higher staffing costs per child. Should Option 6.1B be

²⁰ Calculated by dividing the total number of hours of care attended by children by the total number of hours worked by OSHC educators.

implemented, it is estimated 60 OSHC services in New South Wales will not meet the 1:15 ratio of this option and will be required to engage an additional educator to meet the proposed ratios.

The key benefit relates to quality improvements for those services that do not currently meet the 1:15 ratio. As noted earlier, research examining the benefits of structural quality has found that higher educator to child ratios are linked to better social and learning outcomes for children, with more attention, affection, responsiveness and stimulation from educators. Educators are able to develop more effective and meaningful relationships with children, resulting in more engaged, happy and relaxed individuals.

In addition, the introduction of a prescribed ratio would help regulators enforce compliance where they have identified inadequate supervision as an issue within a service. Ultimately, this would lead to improved outcomes for children, as prescription of a ratio that helps ensure a minimum level of supervision would further protect their health, safety and wellbeing.

While it is difficult to measure these benefits quantitatively, particularly over the possible ranges of ratios that could be selected, the ratios proposed focus on ensuring a basic minimum standard that most services appear to already meet. The cost of transitioning to the new arrangements in New South Wales will likely be offset by ongoing regulatory gains of national consistency for service providers and regulators. There is a risk that the introduction of a national ratio could lead to fewer OSHC staff to children over time in jurisdictions that currently have a higher ratio.

Preferred option

The general consensus from consultation findings was that a ratio of 1:15 would be the most appropriate. This was with the exception of the Australian Capital Territory and Western Australia, which currently operate at ratios higher than this (1:11 and 1:13 respectively). These jurisdictions contended that changing the ratio to 1:15 could result in a lowering of quality in service provision. As such, it is recommended that a ratio of 1:15 be implemented as the national educator to child ratio, with provisions in place for the Australian Capital Territory and Western Australia to preserve their current ratios. The consultations on this proposal in Western Australia and the Australian Capital Territory (where higher ratios exist for the supervision of school children apply) did not generate concerns about the higher ratios on the supply and viability of OSHC in those jurisdictions.

This aligns with the findings of the Productivity Commission Inquiry into Childcare and Early Childhood Learning (2014), which stated that 'given that national requirements exist for children of preschool age and under', there was 'no reason why national minimum requirements relating to school age children could not similarly be prescribed for OSHC and vacation care to provide consistency across jurisdictions' and recommended that 'any national staff ratio for school age care should be no stricter than 1:15'. This option also supports the findings of the Royal Commission into Institutional Responses to Child Sexual Abuse (2014) that failure to comply with staff to child ratios at all times is a contributing factor in failing to maintain a child safe organisation. The implementation of Option 6.1B is largely a formalisation of current jurisdictional arrangements, with the exception of New South Wales. However, the introduction of a prescribed nationally consistent ratio is consistent with the drive to ensure nationally consistent quality outcomes for children across OSHC services. The ratio of 1:15 was commonly agreed by stakeholders as a ratio which would not impose a major cost on the OSHC sector, while continuing to drive quality outcomes.

The current state of research on educator to child ratios for OSHC is not at a level that would allow the relative merits of different ratios to be determined. For example, it is not possible to determine

the relative level of benefits to children under a ratio of 1:15 compared to a ratio of, for example, 1:12. Therefore any recommendation will necessarily be based on some degree of judgement. A ratio of 1:15 is seen to be a relatively low cost option of ensuring that all services meet sufficient minimums of quality, with most services already exceeding this requirement.

Given the high level of support from stakeholders, and the low likely overall cost of the proposal, it is recommended that a national educator to child ratio for OSHC services is introduced.

PREFERRED OPTION: Option 6.1B

Prescribe a national educator to child ratio of 1:15 for all services providing education and care services to children over preschool age.

Western Australia and the Australian Capital Territory will require savings provisions to preserve their existing higher educator to child ratios for children over preschool age.

New South Wales will require a 12 month transitional period to allow the sector time for the introduction of the new requirement.

7. Improved oversight of and support within FDC services

The problem to be addressed

Under the National Law, approved providers of FDC services have primary responsibility for ensuring compliance by FDC educators. Regulatory authorities primarily work with approved providers to secure compliance with the National Law. However, regulatory authorities' current experience with providers from some FDC services indicates that the regulatory model needs strengthening to achieve better compliance and improve the quality of service provision in these services.

There has been unprecedented growth in the FDC sector, particularly the number of new providers and services, with 25 per cent growth in approved services in 2014 and a 26 per cent growth in 2015. Currently some FDC services experience higher rates of non-compliance with the NQF, compared to centre-based services. This growth is creating significant challenges for regulatory authorities using the current legislation to monitor compliance and quality in FDC services and ensure quality outcomes for children. Regulatory powers and operations did not adequately foresee the extent of some FDC services operating over multiple jurisdictions.

Evidence has emerged that some FDC providers operate on a scale and/or with a level of internal supervision (as indicated by the co-ordinator to educator ratio) that is inconsistent with the provision of the quality ECEC experience that the NQF seeks to ensure. Regulators have responded to concerns regarding the governance of FDC services by introducing measures to limit size and improve internal supervision. Additionally, FDC educators have similar qualification requirements to centre-based educators where they are currently only required to be actively working towards a minimum Certificate III qualification. However, FDC educators work without direct supervision or daily staff contact, unlike educators in centre-based services who are working towards their Certificate III.

In response to these issues, a range of proposed options were developed with the objective of ensuring that all FDC providers operate under appropriate oversight and that services have access to appropriate levels of support.

A high level of support for at least some of the suite of proposed options to improve oversight of and support within FDC services came from stakeholders who were not affected by the changes. Support from the FDC providers and their representatives for the options were mixed. The options at Proposal 7.3 to mandate ratios of co-ordinators to educators and to cap the number of educators per service received strong opposition from the FDC sector in written submissions, as stakeholders commented that such changes would be expected to limit the flexibility of business models. Similarly, there was strong opposition to the proposed option at Proposal 7.4 to mandate a minimum Certificate III for FDC educators, as this was anticipated by the FDC sector to negatively impact on the workforce.

FDCA, while 'entirely supportive of well-considered, proportionate and reasonable proposals with the aim of improving the FDC sector and reducing instances of non-compliance', expressed concern that the Consultation RIS 'failed to assess the cumulative impact of the proposals and it has not identified the current regulatory and fiscal pressures facing the FDC sector'. In the context of this, the peak body stated that it 'respectfully requests that the final recommendations constitute a more proportionate and considered approach, taking into account a range of alternative options for solving the apparent compliance related issues'.

7.1 RIS Proposal 7.1 — Approval of FDC services across jurisdictions

Options for approval of FDC services across jurisdictions

Option	Description
7.1A	No change
7.1B	Approved FDC providers be required to hold a service approval in each jurisdiction in which they operate (including paying all relevant fees in each jurisdiction in which they operate an FDC service)

Approved providers are able to operate across jurisdictions with one approval under the National Law, which can make it difficult for jurisdictionally based regulatory authorities that can only regulate services within their own jurisdictions, to monitor the support provided to individual educators and compliance by the service. An issue arises if a service holds an approval in one jurisdiction but operates in another.

In addition, the NQF has no centralised list of FDC educators²¹, limiting knowledge about the extent of services operating across jurisdictions. Regulatory authorities may request a register of FDC educators and any other person engaged by, or registered with a FDC service from an approved provider with information about each of these persons. However, the mobility of educators means that once compliance action is taken, educators may simply move to a new service making them difficult to trace.

There is concern that providers operating low quality FDC services may intentionally seek to exploit any weakness in the regulatory model by, for example, an educator joining a service across a state border to avoid monitoring.

Given that regulatory authorities must be able to take appropriate regulatory action to ensure the health, safety and wellbeing of children, it is proposed that an approved provider of an FDC service be required to hold a service approval in each jurisdiction in which they operate, similar to the centre-based service approval process.

An effect of this change is that approved providers would need to pay all relevant fees in each jurisdiction in which they operate an FDC service. However, it is also proposed that there be special arrangements in the new regulatory scheme in the situation where a service straddles adjacent jurisdictions (e.g. one jurisdiction may allow the same principal office for both service approvals).

In March 2015, there were 919 FDC services across Australia. As shown in Table 24, 90 FDC providers in Australia had educators operating interstate. FDC providers currently pay a \$649 application fee for FDC service approval, and an annual fee for each service, which ranges between \$198 and \$394 depending on service size. As part of a service approval, an approved FDC provider must also associate its service with a principal office in that jurisdiction.

²¹ A centralised list of FDC educators held by state and territory regulatory authorities is not in keeping with regulatory models for FDC in either the National Law or the family assistance legislation where the onus is on providers and services respectively to keep an accurate register of educators, so an option on along these lines was not considered feasible.

Table 24 FDC providers with educators operating interstate

ACT	NSW	NT	QLD	SA	TAS	VIC	WA
1	25	–	7	2	–	48	7

Source: Data request to Australian Government Department of Education (2015).

Note, the table focuses on the location of the FDC coordination units; however, Queensland states that based on the location of educators, approximately 46 FDC providers in Queensland had educators operating interstate in 2015.

Prior to contemplating this option a concerted effort by all jurisdictions and the Australian Government was undertaken to improve the knowledge of FDC providers of their responsibilities and requirements under the NQF, and associated Family Assistance Law, which governs support for families with fees. This included strengthening guidance material and holding a number of consultation and information sessions. However, this approach had little impact on compliance rates. As a result only one option has been put forward for consideration, as options that fall short of a requirement to have a separate approval in each jurisdiction an FDC provider operates are unlikely to address underlying concerns. Options that imposed additional requirements beyond separate jurisdictional approval were not put forward due to the significant increase in regulatory burden without sufficient return on improved compliance and quality service delivery.

In 2014, the family assistance legislation administered by the Australian Government was amended so that from 4 June 2015 approved FDC services must not provide care in a state or territory other than those in which they have a service approval under the National Law, unless granted an exemption. This means that all providers are now required to have a primary office in each state or territory in which they engage educators. New providers have been required to comply with these changes since 4 December 2014 whereas already approved providers were transitioned to the changes from June 2015.

Despite amendments to the Commonwealth's family assistance legislation, under National Law state and territory regulatory authorities are currently unable to independently determine where care is taking place across borders and as a result may not be aware of non-compliance from providers who operate in a different jurisdiction. This poses a risk to children's health, safety and wellbeing.

The consultation process revealed a high level of support for Option 7.1B and this option will assist to increase consistency in requirements across all FDC services, including those not eligible for the Child Care Benefit scheme.

Consultation findings

*Overall, in consideration of the consultation findings, this proposal for change received a **high** level of support.*

There was a high level of support for this option, with approximately four in every five responses to Option 7.1B for approval of FDC services across jurisdictions, from both the survey and submissions, in support of the change. Several submissions noted that such a change should result in an increase of quality service provision as educators should be supported by a local base.

Support for the requirement that services gain approval in all states of operation was stronger than for the associated requirement for services to hold a principal office in each location, which is part of the jurisdictional approval process. As Family Day Care Association of Queensland stated:

‘We agree that all services must have approval in all states where they have educators operating across jurisdictions. We question the recommendation of being required to hold a principal office in each jurisdiction and how a physical office impacts quality outcomes for children in FDC. We recommend considering what are the capacities a service must be able to demonstrate as a quality service.’

— Family Day Care Association of Queensland submission to the RIS

In this vein, there was a level of concern that such measures could result in high quality FDC services which had established flexible and innovative business models being unnecessarily limited. One provider suggested that instead, standards could be developed to achieve the same desired outcome of appropriate support for FDC services — for instance, a minimum number of face to face visits by the co-ordinator per year.

In regard to incidents of non-compliant providers avoiding detection by crossing state borders, it was recommended in several submissions that a national register of non-compliance be established. The New South Wales Family Day Care Association noted that ‘any proposed change to restrict operations across states would create a barrier to future recruitment for services that are located close to state borders’ and that it was ‘important to note that some NSW member services currently successfully manage to operate with educators who reside in close proximity to borders’.

As stated, the survey responses also showed very strong support for this proposal. Fifty-five per cent of responses to this question strongly agreed with Option 7.1B, while only 4 per cent strongly disagreed. Similarly, for every one disagreement with Option 7.1B there were approximately 14 agreements.

Table 25 Survey responses on support for change — Approval of FDC services across jurisdictions

Survey options	Survey
Support for retaining the current arrangements (no change)	21 (17%)
Support for changing the current arrangements (change)	106 (83%)
Total responses	127

Assessment of net benefit

The key benefit of this proposal is the facilitation of higher quality FDC service provision. Regulatory authorities would have higher visibility of FDC services and educators, in turn enhancing the health, safety and wellbeing of children.

It is possible for providers and services to operate without choosing to access Commonwealth funding. If Option 7.1B was not implemented, it may leave a loophole that could be exploited by those wishing to operate outside the NQF system (e.g. low-paying cash in hand operations carrying significant safety and compliance risk).

In 2015, there were an estimated 90 FDC providers that operated interstate, although it is unclear how many of these providers would be required to establish additional principal offices. The introduction of changes to Commonwealth Family Assistance Law that are consistent with Option 7.1B from 4 June 2015 mean the costs of implementing Option 7.1B would have already been incurred by affected services.

Given this, Option 7.1B is expected to return a net benefit.

Preferred option

There was a general consensus among stakeholders that Option 7.1B would increase the ability of regulators to better monitor non-compliance and therefore increase quality. Implementing the option also prevents FDC services from operating in a manner that was not intended, potentially beyond the immediate jurisdiction of a single state or territory regulatory authority. Special arrangements should exist for services operating close to jurisdictional borders. The cost impact of this option is ameliorated by the passing of complementary Commonwealth Family Assistance Law requiring by 4 June 2015 a service's FDC carers can only provide care on behalf of the service within the state or territory in which the service has a current Child Care Benefit service approval, unless granted an exemption.

PREFERRED OPTION: Option 7.1B

Approved FDC providers be required to hold a service approval in each jurisdiction where the FDC educators operate (including paying all relevant fees in each jurisdiction in which they operate an FDC service).

Further, it is recommended that:

- An FDC principal office would be required to be nominated with each service approval and would also be recorded on the service approval, as currently required under the National Law.
- There would be special arrangements permitting an approved provider to have one principal office for both FDC service approvals where the proposed FDC services are in Local Government Areas in adjacent jurisdictions (e.g. Albury/Wodonga). This would be in the form of a waiver or temporary waiver from the requirement for an approved provider to have a principal office in each jurisdiction in which they have a service, and would also be a condition on the service approval.
- Guidance materials will need to be developed for regulatory authorities to ensure consistency in applying these new arrangements.

7.2 RIS Proposal 7.2 — Limiting the number of FDC educators in a service

Options for limiting the number of FDC educators in a service

Option	Description
7.2A	No change
7.2B	Amend the National Law so that a regulatory authority may impose a maximum number of educators approved to be engaged or registered by an FDC service and include this on the service approval

Unlike centre-based services, FDC services are not approved for a maximum number of places, which means that growth of an FDC service is solely at the discretion of the approved provider with no oversight by regulatory authorities. However, an FDC service must engage FDC co-ordinators to support, monitor and train FDC educators.

As part of the application process for service approval, the regulatory authority must have regard to the NQA objectives and may have regard to the management capability of the applicant. However, it has proven difficult for regulatory authorities to adequately assess the likely future operation of an

FDC service when the size of the service is unknown. In order to assess these factors, regulatory authorities generally need to have some sense of the maximum number of educators the service may engage and therefore the capacity of the co-ordinator to provide appropriate monitoring, support and training for FDC educators operating under the FDC service²². Currently a number of jurisdictions are imposing conditions on the service approval to limit the number of educators to ensure appropriate oversight and quality service delivery.

To address these concerns, it is proposed that the National Law and National Regulations are amended to make it clear that a regulatory authority *may* impose, on a case by case basis, a maximum number of educators approved to be engaged or registered by an FDC service and include this on the service approval. This could take into account the history of the approved provider compliance with the NQF.

Limiting the number of FDC educators in a service would help ensure that a new FDC service grows at an appropriate pace e.g. that it has appropriate policies and procedures in place before it expands, and that it does not grow beyond its management capability.

Information from the Australian Government Department of Education and Training has shown that there has been considerable growth in FDC services, especially in the last three years, and that non-compliant services often had significantly increased numbers of educators.

Only two options were considered as this was an either or scenario.

Consultation findings

*Overall, in consideration of the consultation findings, this proposal for change received a **mixed** level of support.*

The responses to the Option 7.2B to limit the number of FDC educators in a service were mixed, with approximately half of submissions addressing this question supporting the option for change.

The major concerns with Option 7.2B were that the regulation would restrict high quality FDC providers in delivering services in line with innovative business models. Submissions often mentioned the need to clarify how the cap would be implemented, stressing the need to calculate based on full-time equivalent staff, so as not to bias against part time employees.

It was also submitted that placing a cap on the number of FDC educators per service would increase the costs of FDC and therefore be less attractive to families, including relative to other service types. This would effectively create an uneven playing field within the forms of ECEC delivery and limit parent choice compared to current arrangements. It is also noted that this is not currently the case in Victoria where more than half of the services operate with a cap.

New South Wales Family Day Care Association suggested that a cap on the number of educators could apply to new services until they have successfully completed an assessment that deems they are meeting the NQS. They submitted that Option 7.2B in its current form would be detrimental to the sector, as ‘a “blanket” limit of educators per service would restrict services’ ability to meet

²² An application for FDC service approval must include the number of FDC educators expected to be engaged within 6 months, but there is no obligation for the provider to notify the regulatory authority of new educators once they have gained service approval, unless they are operating at an FDC venue.

demand in areas of growth and would impact on the financial viability for services that may not be eligible for Community Support Program funding’.

FDCA did not support Option 7.2B, stating that ‘imposing a reactive and highly discretionary new power to regulatory authorities is not an appropriate response to such issues ... if Option 7.2B were to be implemented, FDCA would advocate for a clear and transparent process by which services with a cap placed upon them have the ability to appeal the decision’.

The survey responses to options were slightly more supportive than the written submissions, with 65 per cent of respondents to this question supporting the change. For every one disagreement with Option 7.2B there were approximately 2.5 agreements. Additionally, while 39 per cent of respondents strongly agreed with Option 7.2B, only 15 per cent strongly disagreed.

Table 26 Survey responses on support for change — Limiting the number of FDC educators in a service

Survey options	Survey
Support for retaining the current arrangements (no change)	44 (35%)
Support for changing the current arrangements (change)	83 (65%)
Total responses	127

Assessment of net benefit

Some services already operate with an educator limit. As outlined above, the implementation of Option 7.2B is not expected to impact a large number of services, as the majority of services have fewer than 50 educators. Nevertheless, it could still result in material impacts at the per-service level.

The intent of proposed option is to prevent the operation of FDC services operating beyond their capacity, and will not be unduly applied where services can demonstrate a capacity to operate in compliance with the National Law with a greater number of educators. This brings the principles applied to FDC in line with those already applied to centre-based services where a cap is applied to ensure quality of provision (by virtue of the physical space capacity of the building), and is also in line with some states which currently specify maximum numbers of educators for FDCs through conditions on service approvals.

The expected benefit of this change is increased support for FDC educators (in affected instances). The changes are expected to translate to higher quality service delivery and improved safety and quality outcomes for children. This change compliments other measures to improve oversight and support compliance to prevent fraudulent behaviour, such as instances identified in 2015 and 2016 where providers were found to have not engaged the number of educators stated in their service approval.

Given that limits on educator numbers will only be imposed on a case by case basis, the cost of this measure is likely to be low. The main cost may be the nature of the opportunity cost. This might be, for instance, through services not being able to take advantage of administrative efficiencies where a lower number of educators is imposed or a service cannot readily respond to new demand. This opportunity cost is expected to be outweighed by the benefits of more adequately supported FDC

educators in those services where it is applied, and assurance of service provision under the National Law and National Regulations. Overall, a net benefit is expected.

Preferred option

There was significant objection to this proposal within the FDC sector. However, as the limit would only be imposed on a case by case basis based on the judgement of the regulator as to the ability of a service to expand while maintaining quality of service, and as such, is expected to result in a net benefit to the sector. It is therefore recommended that Option 7.2B be implemented. It is not envisaged that such an amendment would be used to curb growth in legitimate service delivery, but instead provide a safeguard against a detrimental impact on quality outcomes due to unsustainable growth. This was also supported by a wide range of non-FDC stakeholders in consultation, who sought improved oversight of FDC services in the interests of ensuring quality outcomes for children.

If implemented, it will also be necessary to provide regulatory authorities with the power to also amend the service approval upon application by the approved provider or at its discretion, noting this decision would be internally reviewable.

PREFERRED OPTION: Option 7.2B

Amend the National Law and National Regulations so that a regulatory authority may impose a maximum number of educators approved to be engaged or registered by an FDC service and include this on the service approval as a condition of the service approval.

- Noting that the National Law currently enables regulatory authorities to amend the service approval including the imposition of any conditions on the service approval that would be associated with limiting the maximum number of educators.
- To help ensure national consistency, develop guidelines to assist regulatory authorities when exercising this discretion, including examples of when the discretion may be exercised (such as where there is a new service whose ability to run a service is untested, or where the service has a history of compliance issues), and when such conditions should be reviewed (every 12 months of operation). To ensure transparency this guidance should also be available to FDC providers.

7.3 RIS Proposal 7.3 — Mandating a ratio of FDC co-ordinators to educators

Options for mandating a ratio of FDC co-ordinators to educators

Option	Description
7.3A	No change
7.3B	Introduce a 1:10 ratio of FDC co-ordinators to educators AND/OR
7.3C	Amend the National Law on conditions on service approval to include a duty for the approved provider to ensure that FDC educators are adequately supported, monitored and trained
7.3D	Introduce a 1:15 ratio of FDC co-ordinators to educators AND/OR Amend the National Law on conditions on service approval to include a duty for the approved provider to ensure that FDC educators are adequately supported, monitored and trained

Option	Description
7.3E	Introduce a 1:20 ratio of FDC co-ordinators to educators AND/OR Amend the National Law on conditions on service approval to include a duty for the approved provider to ensure that FDC educators are adequately supported, monitored and trained

The National Law uses an outcomes-based approach to enforce the requirement that the approved provider ensures there are sufficient FDC co-ordinators to monitor, support and train FDC educators and ensure that each FDC educator is adequately monitored and supported by a co-ordinator. Approved providers must also ensure that at all times one or more co-ordinators are engaged to support and monitor the FDC educators of that service. The requirement to provide training to FDC educators is currently managed through guidance material and the proposed options seek to make this a requirement as adequacy of support is open to individual provider interpretation.

As mentioned, information from ACECQA has shown that there has been considerable growth in FDC services with 47 per cent growth in 2013-14, 20 per cent growth in 2014-15 and 14 per cent growth in 2015-16²³. The Australian Government Department of Education and Training made the observation that the non-compliant services grew in size substantially — usually through increased numbers of educators. This raised concerns about the capacity of services to adequately monitor the quality of care provided by these educators.

An Organisation of Economic Co-operation and Development (OECD) briefing paper on working conditions within ECEC outlined that ‘evidence shows that ECEC practitioners who experience little professional support from the centre’s management have lower job satisfaction and perform their teaching and care giving tasks less well than those that are professionally supported’ (2012)²⁴. This highlights the importance of educator support and the follow on linkages to quality service delivery.

The National Law does not prescribe the number of FDC co-ordinators or detail the type of support they must provide. As such, sector feedback suggests that the lack of prescription has resulted in a degree of variability in the level of support for, and supervision of FDC educators, resulting in variable quality of service provision.

Consultation findings

*Overall, in consideration of the consultation findings, this proposal for change received a **mixed** level of support. Option 7.3C received the highest level of support, with no clear preference for a mandated ratio emerging.*

Support for proposed options for a mandated ratio of FDC co-ordinators to educators was similar across both surveys and submissions, with approximately two-thirds of respondents to options in support of change. Submissions in support of change primarily stated an expected increase in quality service provision by FDC educators as a result of increased support by co-ordinators. For instance, Lady Gowrie Tasmania stated that ‘Because FDC educators predominately work in isolation, it is imperative that they have high level consistent and regular support from qualified and experienced field workers’.

²³ ACECQA Snapshot data from 2013 – 2016.

²⁴ OECD (2012), Research Brief: Working conditions Matter, *Encouraging Quality in Early Childhood Education and Care*, available at <http://www.oecd.org/edu/school/49322250.pdf>

The comments surrounding proposed options was similar to that of Proposal 7.2, with concern that such a requirement would unduly burden high quality providers from operating in the manner best suited to them. It was stated in various submissions that the skills and capabilities of co-ordinators were the primary functions in providing support and an arbitrary ratio would not influence this. The assessment and rating process should be used to manage low quality service provision instead. Further, FDCA submitted that this would be a departure from the current outcomes-based approach on which the National Law is based.

Family Day Care Association (QLD) noted that it is assumed approved providers are required under the current legislation to ensure educators are adequately supported and monitored. The proposed options were therefore seen as an indication that ‘the current approval process is inadequate and continues to allow inappropriate providers to operate’. Approval processes in isolation, however, cannot screen for issues that arise during the operation of services. They called for additional training to be provided to authorised officers within the FDC system to ensure an adequate knowledge of best practice FDC delivery.

There was a call for clarification on what constituted a ‘co-ordinator’ with various providers noting that the allocation of staff responsibilities varies significantly across provider models for multiple reasons. For instance, Bundaberg Baptist stated that their ability to receive an Excellent rating was due to additional projects and programs that they offer to broader communities — requiring a higher number of staff. However, it is noted that the term ‘FDC co-ordinator’ is already defined in section 163 of the National Law and it is this definition that will be utilised in the amended regulation.

Best Chance submitted that imposing such a restriction on high quality providers, where the ratio may not see an increase in the level of support for educators, would have a negative impact. They stated that ‘mandating a ratio of FDC co-ordinators to educators where there is a wide variety of service variables without a guaranteed net benefit to a service means the proposal may end up being simply a reduction in profits for a service where set too low’.

Several submissions gave evidence of services achieving high quality NQF ratings, while maintaining high co-ordinator to educator ratios. As an example, large provider Early Childhood Management Services (ECMS) stated that they ‘currently cap the co-ordinator to educator ratio at 1:25. This model is embedded in a larger organisation that provides pedagogical leadership and additional service support to the FDC staff; for example, human resources, finance and service development. The model also allows for additional support to FDC educators through a leadership role (team leader) and administration support (not counted in ratios). ECMS is confident this model meets the requirements for safety and wellbeing of children and the requirements for adequate support for educators to deliver quality ECEC.’ Similarly, Port Stephens Council submitted that they achieved a rating of ‘Exceeding’ with a ratio of 1:27 and FDCA stated knowledge of one service which was rated ‘Excellent’ while maintaining a ratio of 1:32. It was also re-iterated that such a ratio would need to work with full-time equivalent staff members.

The survey responses indicated that while the majority of respondents were supportive of a change to the current arrangements, the only option that received a vastly higher level of agreement than disagreement was Option 7.3C, to amend the law to include a duty for the approved provider to ensure that FDC educators are adequately supported, monitored and trained.

In relation to the introduction of a mandated ratio, the survey responses showed the highest level of support for Option 7.3B, a ratio of 1:10. However, this was still quite evenly split, with 29 per cent of respondents strongly agreeing with the introduction of Option 7.3B and 26 per cent of respondents strongly disagreeing. Option 7.3D (1:15 ratio) and 7.3E (1:20 ratio) both received a higher number of disagreements than agreements.

Table 27 Survey responses on support for change — Mandated ratio of FDC co-ordinators to educators

Survey options	Survey
Support for retaining the current arrangements (no change)	42 (33%)
Support for changing the current arrangements (change)	85 (67%)
Total responses	127

In the Victorian, Northern Territory and Australian Capital Territory public consultation sessions, there tended to be more support for the options to mandate a ratio of FDC co-ordinators to educators, compared to other states and territories.

Assessment of net benefit

The proposed change to mandate a minimum co-ordinator to educator ratio across the FDC sector may increase compliance costs for individual FDC services that do not currently meet the proposed ratio.

Ratios can be estimated using data on the number of FDC co-ordinators and educators currently employed, as outlined in Table 28. It should be noted that these estimated ratios are averages only, and it may be the case that actual ratios vary significantly from provider to provider.

Table 28 Estimated FDC co-ordinator to educator ratios, 2013

	ACT	NSW	NT	QLD	SA	TAS	VIC	WA
Number of co-ordinators	20		18	281		35	725	
Number of educators	373	12,412	220*	3,727	927	550	15,289	1,041*
Estimated ratio	1:19		1:12	1:13		1:16	1:21	

Source: National Workforce Census 2013; Data request to the Australian Government Department of Education (2014); where data is left blank, it is an indication that the data was unavailable. *These data items are from 2013.

Although there may be a material cost for those providers who are affected, in per child terms, the cost is likely to be marginal (that is, once the cost is distributed across all children). As data on co-ordinator numbers is only collected in selected jurisdictions, a preliminary estimate of indicative average costs of co-ordinator to educator ratios in FDC is provided in Table 29 for those states and territories that have co-ordinator data.

These estimates assume an average wage cost of \$46,000 per co-ordinator per annum (based on an average wage of a diploma level educator) and do not include on-costs. The costs vary significantly across jurisdictions and depending on the ratio under consideration. The costings below are based on average ratios while individual service ratios vary from service to service. Therefore, while a ratio of 1:25 is seen as incurring no additional costs to services in Table 29, it should be noted that individual services may face costs if they are operating at a ratio above 1:25.

Table 29 Indicative average preliminary costs of co-ordinator to educator ratios

	ACT	NSW*	NT	QLD	SA*	TAS	VIC	WA*
Estimate of current ratio	1:19		1:12	1:13		1:16	1:21	
Additional staff								
New ratio 1:10	18		4	92		20	804	
New ratio 1:15	5		0	0		2	295	
New ratio 1:20	0		0	0		0	40	
New ratio 1:25	0		0	0		0	0	
Additional costs								
New ratio 1:10	\$835,000		\$198,000	\$4,153,000		\$945,000	\$36,552,000	
New ratio 1:15	\$232,000		Minimal cost	Minimal cost		\$95,000	\$13,411,000 ¹	
New ratio 1:20	Minimal cost		Minimal cost	Minimal cost		Minimal cost	\$1,818,000	
New ratio 1:25	Minimal cost		Minimal cost	Minimal cost		Minimal cost	Minimal cost	
Additional cost per educator								
New ratio 1:10	\$2,200		\$900	\$1,100		\$1,700	\$2,400	
New ratio 1:15	\$600		Minimal cost	Minimal cost		\$200	\$900	
New ratio 1:20	Minimal cost		Minimal cost	Minimal cost		Minimal cost	\$100	
New ratio 1:25	Minimal cost		Minimal cost	Minimal cost		Minimal cost	Minimal cost	

Source: Deloitte Access Economics analysis. Note: wage costs are based off average wage costs of diploma level child care staff in each jurisdiction and do not include on-costs.

*Co-ordinator data was not available for these states.

There has been significant change in the sector since this 2013 data. In July 2015, in Victoria, 71 per cent of services (258/361 FDC services) have a condition requiring a co-ordinator to educator ratio of 1:15.

During the Consultation RIS process, the Family Day Care Association of Queensland provided a submission outlining estimated costs relating to potential changes to ratios which are much higher when compared to Table 29. The submission analysed ratio changes of 1:10 and 1:15 against three location types (major city, inner regional and outer regional) and a range of costs to establish their findings such as combined wages and on-costs, computer maintenance, office equipment costs, staff amenities and increased rent. As Table 29 references average wage costs for a Diploma level educator, with no on costs, no further analysis has been provided as costings are not comparable.

The benefits of the change are expected to accrue through increased support for FDC educators in those services that are consequently required to increase their ratio, due to better monitoring, support and training (noting this is especially important in FDC, given FDC educators do not work in a centre-based service and are therefore less exposed to other educators, with subsequent impacts on professional development), and the follow-on positive impacts on children's safety and wellbeing. It is also anticipated that a higher level of support for FDC educators would result in increased job satisfaction (OECD, 2012) and a potential positive impact on workforce retention.

Preferred option

The support levels for different suggested ratios were mixed. Given that the intent of the proposed options is to ensure adequate support for FDC educators, rather than impose unnecessary and costly restrictions on proven FDC providers, it is suggested that a co-ordinator to educator ratio of 1:25 would be the most appropriate (rather than 1:10, 1:15 or 1:20). This recognises the feedback in submissions that it is possible to run high quality services with a high co-ordinator to educator ratio. Table 29 suggests there would be minimal to no cost for the few services operating at co-ordinator to educator ratios of 1:25.

However, new FDC services are likely to have a higher proportion of new educators who benefit from greater coordinator support. As such, it is appropriate to require a 1:15 coordinator to educator ratio in the first 12 months of the operation of a new FDC service to ensure that educators are supported and care meets the requirements of the National Quality Framework.

To ensure that regulatory authorities are able to appropriately address specific issues with providers, it is recommended that regulatory authorities have the discretion to impose a 1:15 ratio after the first 12 months of the operation of a FDC service if they consider it necessary, and for the National Regulations to be amended to provide them with the ability to waive the ratio requirement.

If implemented, the National Law and National Regulations would also need to be amended to enable regulatory authorities to enforce the minimum co-ordinator to educator ratios. Similar to the enforcement of other prescribed ratios in the ECEC sector, it is recommended that a penalty be applied in cases of non-compliance.

PREFERRED OPTION: Alternative option

The National Law and National Regulations be amended to:

- **require approved providers of an FDC service to have a prescribed minimum full time equivalent (FTE) FDC co-ordinator to every 15 educators (ratio of 1:15) for the first 12 months of operation, with immediate effect for any new FDC services**
- **require approved providers of an FDC service, after 12 months of operation, to have a prescribed minimum of 1 FTE FDC co-ordinator to every 25 educators (ratio of 1:25)**
- **provide that a breach of these new requirements would be an offence with penalty (\$5,000 for individuals and \$25,000 for others, as in existing section 163 of the National Law).**

It is further recommended that:

- *the National Law and National Regulations be amended to provide a regulatory authority with the discretion to impose a 1:15 ratio (after the first 12 months of the operation of a FDC service), or to waive the ratio requirement.*
- *a transitional period is provided to allow approved FDC services, that are not currently subjected to an FDC co-ordinator ratio, a period of 12 months to meet the new ratio requirements.*
- *an exception be provided for approved FDC services that are currently subject to conditions imposing different minimum FDC co-ordinator numbers.*
- *guidance materials will be developed to ensure national consistency and to help regulatory authorities and approved providers understand and give effect to their obligations under this recommendation.*

7.4 RIS Proposal 7.4 — Mandating a minimum Certificate III for FDC educators

Options for mandating a minimum Certificate III for FDC educators

Option	Description
7.4A	No change
7.4B	Require all FDC educators to have an approved Certificate III (or equivalent) before being permitted to educate and care for children, rather than working towards the qualification, which is currently the requirement

FDC educators have similar qualification requirements to centre-based educators where they are currently only required to be actively working towards the Certificate III qualification. However, FDC educators work without direct supervision or daily staff contact unlike educators in centre-based services. This could be considered a cause for concern for the wellbeing of children in FDCs and the quality of service delivery by educators who are not fully qualified. In a comprehensive literature review on the determinants of quality within ECEC, Huntsman (2008) found that ‘the most significant factor affecting quality appears to be caregiver education, qualifications and training’ and that ‘caregivers with a higher level of formal education had more specialised child-related training, held less authoritarian child-rearing beliefs, and were in settings rated as more safe, clean and stimulating’²⁵.

On 1 July 2013, a revised training package including a new Certificate III qualification was released by the Community Services and Health Industry Skills Council. The revised Certificate III was more closely aligned with the NQF than its predecessor and includes a work placement for a minimum of 120 hours, as well as revised units such as ‘provide care for babies and toddlers’ (ACECQA, 2013)²⁶. To be regarded as a Certificate III level educator, the educator must be enrolled in an approved qualification, have commenced the course, be making satisfactory progress towards completion and meet the requirements to maintain enrolment.

However, there is evidence to suggest that actively working towards a Certificate III enrolment often does not result in the qualification being obtained. A 2013 study (Wynes et al) conducted by the National Centre for Vocational Education Research (NCVER) found that course completion rates for ECEC qualifications are low, estimated to be less than half of all enrolments in 2010²⁷. Primary identified reasons for the low completion rate included students enrolling in a course and then finding the course unsuitable, low quality training or finding the work placement component more challenging than expected. As such, the requirement for work placement within the new Certificate III requirements is understood to be particularly crucial to the attraction and retention of appropriate staff.

In light of the low completion rates for Certificate III, and the higher degree of autonomy under which FDC educators work, it was proposed in the Consultation RIS that there could be a

²⁵ Huntsman, L. (2008), *Determinants of quality in child care: A review of the research evidence*, Centre for Parenting and Research, NSW Department of Community Services.

²⁶ ACECQA (2013), *Qualifications Edition*, Issue 16, available at http://files.acecqa.gov.au/files/Newsletters/2013_ACECQAissue16_FINAL.pdf

²⁷ Wynes, S.H., Gemici, S. and Stanwick, J. (2013), *Engagement of students in children’s Services qualifications — Final report*, NCVER Consultancy Report for DEEWR.

requirement for all FDC educators to have a Certificate III (or equivalent) before being permitted to educate and care for children, rather than working towards the qualification, which is currently the requirement. It should be noted, in South Australia there is already a requirement for FDC educators to have a Certificate III before educating or caring for children. To date, there has not been sufficient assessment and rating visits conducted to provide adequate evidence regarding the potential benefits of a higher or lower qualification.

A transitional provision would be needed to give time for approved providers and FDC educators to comply with any new requirements. Consideration could also be given to FDC educators being taken to meet this requirement if they have completed a specified proportion of the Certificate III course.

Consultation findings

*Overall, in consideration of the consultation findings, this proposal for change received a **mixed** level of support.*

The responses to Option 7.4B for a mandated minimum Certificate III for FDC were mixed. Both the survey and submission responses to this question illustrated approximately half of the respondents supporting the change and half not supporting the change.

The support for Option 7.4B was primarily stated to be based on the increased autonomy which FDC educators generally work under. However, those in support generally recognised that this change may result in adverse outcomes for the FDC sector.

‘C&K understands the proposed change, given that these educators are autonomous. However, the reality of FDC is that educator recruitment is challenging. The Productivity Commission’s recommendations are looking towards more flexible care options. Creating further hurdles will not improve services abilities to recruit educators to provide this to families, but will instead increase recruitment challenges.’

— C&K submission to the RIS

Similarly, FDCA stated that they were in support of Option 7.4B on the condition that ‘there must be a uniform and consistent approach to qualification requirements for all ECEC service types regulated under the NQF’, for example, were in support of the proposed option if the mandatory minimum qualification was extended to all ECEC educators.

Non-support for Option 7.4B was centred on two primary objections: (1) that this would severely limit the pool of recruitment for ECEC workers, a workforce that is already under-resourced; and (2) that working in an ECEC service while completing a Certificate III is highly beneficial to the education experience and produces higher quality graduates.

The first of these objections was more strongly advocated in rural areas, with several submissions from rural providers contending that a mandated Certificate III prior to commencement as an FDC educator would be an ‘impossibility’. Isis Family Day Care submitted that ‘this would be absolutely unmanageable and impossible for services in rural and remote areas ... even if they can recruit them, it will take months before they can start work’.

‘We are a service rated as exceeding the standard in all 7 areas. We have a large number of educators who start FDC without Certificate III. It is critical to the growth and success of our service to allow those (who meet our stringent criteria) to register as an educator prior to

completing Cert III. Many people would be unable to pay the cost of Cert III or remain unemployed while completing the certificate. In rural communities people do not have the same access to face-to-face training. I have also found FDC to be a fantastic training ground for individuals — particularly in rural communities where it can be very hard to find suitably qualified staff — to work and gain EC qualifications and then take other positions in the community eg room leaders in LDC, working in mobile services, family support, preschool etc.'

— Online survey comment

In recognition of these restraints, several submissions suggested that a 12 month maximum timeframe be placed on the requirement of completing a Certificate III while working as an FDC educator. This adjustment may reduce the risk of deterring new entrants to the workforce, retain the ability to undertake qualifications while working in the sector at the same time and decrease the risk of educators continually deferring their studies.

The Northern Territory consultation session with peak bodies noted that it was already a large struggle to attract educators to the sector and that mandating a Certificate III requirement prior to commencing work would further heighten this issue.

It was also mentioned in several submissions that FDC services often provided their own training programs that they felt provided higher quality outcomes than the undertaking of a Certificate III. For instance, New South Wales Family Day Care Association stated that they had 'an extensive professional induction training program available to members and all New South Wales FDC services have a thorough training and orientation process which often has higher completion requirements than the Certificate III'. In a similar vein, the Family Day Care Association of Queensland questioned that FDC educators were subject to a lower level of oversight.

'A comparison to centre-based and FDC educators working on their own does not adequately demonstrate the impact to quality that would derive an Educator needing the Certificate III prior to starting. We would like to highlight that currently an assistant in a centre-based environment is not required to be enrolled and studying towards a Certificate III, and has 3 months to enrol after starting employment ... the coordination unit plays a significant role in recruiting an educator with the appropriate skills and attributes and has an intentional approach to the ongoing support and development of educators. We challenge the thinking that just because you may be working in a space where several educators work alongside one another that those educators are providing intentionality of development and oversight of their colleagues'

— The Family Day Care Association of Queensland submission to the RIS

As stated, the survey responses to the proposed option was mixed, with a fairly even split of support and non-support for changing the current arrangements. However, when asked specifically whether they agreed or disagreed with Option 7.4B, respondents were more positive, with 45 per cent strongly agreeing with the option while 18 per cent strongly disagreed. For every one respondent that disagreed with Option 7.4B, approximately two respondents agreed.

Table 30 Survey responses on support for change — Mandating a minimum Certificate III for FDC

Survey options	Survey
Support for retaining the current arrangements (no change)	62 (51%)
Support for changing the current arrangements (change)	65 (49%)
Total responses	127

Assessment of net benefit

The main benefit of the proposed change is increased quality of education and care for children attending FDC services, by ensuring that FDC educators are fully and appropriately qualified before educating and caring for children. This is important in an FDC environment, where educators are generally without daily contact or support from other educators.

Given that educators must already be working towards this qualification, a relatively small proportion of the current FDC workforce would be affected by Option 7.4B if a suitable transition period is given. Most FDC educators currently have at least a Certificate III qualification in a relevant field, as seen in Table 31 below.

Table 31 FDC educators qualifications by state, 2013

Qualification	NSW	VIC	QLD	SA	WA	TAS	ACT	NT
Educators	10,784	14,302	3,727	1,165	1,910	559	326	186
Teacher	2%	2%	3%	1%	3%	3%	2%	2%
Diploma	25%	24%	27%	24%	32%	34%	17%	20%
Certificate III	53%	56%	37%	63%	48%	52%	59%	70%
Unqualified (including those working towards a certificate III qualification)	20%	19%	33%	11%	17%	10%	23%	7%

Source: Deloitte Access Economics (2014). Qualifications are based on the highest level of qualification related to ECEC attained, therefore, persons working towards a qualification are considered unqualified.

Given the percentage of current FDC employees who do not hold a Certificate III qualification, and that an appropriate transition time could be implemented to allow these employees to finish their qualification, the costs associated with requiring current FDC educators to attain a Certificate III are likely to be low. However, as noted in consultation feedback, there may be more significant impacts in attracting new educators, particularly in rural and remote areas where qualified staff are more difficult to recruit and retain. FDC services across Australia may experience costs due to delays as educators are required to complete their qualification prior to starting work and some workforce gaps may emerge.

There may also be higher training costs for individual entrants as it may be more difficult to access funded programs, such as traineeships, without employment. While Option 7.4B would not increase the study costs incurred by educators, it would be mean that the costs were incurred prior to them entering the professional workforce, posing a barrier to employment for some prospective educators.

Preferred option

Acknowledging the concerns raised by stakeholders, particularly on the recruitment of new educators in FDC services, it is recommended there is no change to current qualifications requirements for FDC educators.

PREFERRED OPTION: Option 7.4A That there is no change to the National Law or National Regulations regarding the mandating of Certificate III qualifications for FDC educators.

7.5 RIS Proposal 7.5 — FDC educator assistants' activities

Options for FDC educator assistants' activities

Option	Description
7.5A	No change
7.5B	Create an offence (with attached penalty) that an approved provider must ensure the assistant's activities are limited to the circumstances set out in regulation 144(2) (as amended), with the penalty set at \$2,000

Regulation 144 provides for circumstances in which an approved FDC educator assistant may, with the written consent of a parent of each child, assist the FDC educator, including attending an appointment (other than a regular appointment).

The meaning of the term 'regular appointment' is unclear and is currently being construed by some service providers as allowing them to leave children with an assistant while they undertake personal tasks. This potentially leaves the children in the care of someone who does not have any training in children's education and care for more time than is necessary, impacting on the quality of the education and care.

It is therefore proposed to create two new offences with attached penalties:

- that an approved provider must ensure the FDC educator assistant's activities are limited to the circumstances set out in regulation 144(2) (as amended). The penalty would be set at \$10,000 for individuals and \$50,000 for others.
- That an FDC educator must ensure that the FDC educator assistant's activities are limited to the circumstances specified in the National Regulations (as amended). The penalty would be set at \$2,000.

It should be noted that this proposal links to proposed clarification of the term 'regular appointment' in regulation 144(2)(c) concerning the assistance of FDC educator assistants. The proposed clarification aims to ensure that children would not be left with an FDC educator assistant during such regular appointments. The proposed clarification in the Consultation RIS was:

- *'a regular appointment is an appointment where the time and place of the appointment is reasonably predictable from one appointment to the next' or*
- *'a regular appointment is an appointment where the circumstances of the appointment are largely the same from one appointment to the next'*

This would include attendance at a course of study or language class.

Consultation findings

*Overall, in consideration of the consultation findings, this proposal for change received a **high** level of support.*

Submission responses showed a high degree of support for this proposal, with approximately three-quarters of relevant responses in support of the proposed changes.

However, it was identified in several submissions that the issue of misinterpretation arose primarily from the wording of the regulation rather than deliberate disregard, and therefore the introduction of a penalty may be unnecessary. It was suggested instead that an alternative option would be to reword the regulation to clarify that an educator's assistant's activities should be restricted to unavoidable situations.

A number of submissions contended that the regulation could be reworded to state that appointments must be less than three hours and no more than once a week (excluding certain circumstances such as child pick-up). It was also suggested that the nature of the events in which an FDC educator's assistant could be used should be more clearly articulated. C&K stated that 'there may be a simpler way to address the risk of an FDC educator assistant being regularly left in charge of children, before creating an offence' and suggested that the regulation may be made clearer through the use of words such as 'genuine, unavoidable, one-off, unpredictable' to better educate services on when the use of such a mechanism is appropriate.

Given this feedback, it is recommended that an alternative option be considered in which the regulation is reworded to better clarify the policy intent of regulation 144(2). Although it is noted that some wording may prove difficult to quantify and may still leave some room for interpretation.

Approximately two-thirds of survey responses to this question were in support of the proposed changes to FDC educator assistant's activities. For every one respondent that disagreed with Option 7.5B, approximately five respondents agreed. Similarly, 30 per cent of respondents strongly agreed with the proposal in comparison to 7 per cent who strongly disagreed.

Table 32 Survey responses on support for change — FDC educator assistants' activities

Survey options	Survey
Support for retaining the current arrangements (no change)	45 (35%)
Support for changing the current arrangements (change)	82 (65%)
Total responses	127

Assessment of net benefit

Rewording the regulation would be expected to generate a net benefit, as there are no anticipated costs of implementing the change. Benefits would be expected to accrue to services and the sector in the form of likely improvements in the safety and quality of FDC services due to a decrease in the amount of time children are supervised by an FDC educator assistant. The increased clarity would also reduce any regulatory burden, particularly for services and providers, in having to consider what would meet the definition.

Preferred option

It is recommended in the event of unforeseen or exceptional circumstances, FDC educator assistants may, with the written consent of a parent of each child, stand in the place of an FDC educator to provide care to children. It is also recommended an offence be introduced for approved providers who do not ensure educator assistant's activities are in accordance with legislated provisions that involve educator assistants. A further recommendation is to introduce an offence for FDC educators who do not ensure the assistant's activities are in accordance with the National Regulations.

PREFERRED OPTION: Option 7.5B

Amend the National Regulations concerning FDC educator assistants to better clarify the policy intent of this regulation, which is that FDC educator assistants should only be able to stand in the place of a FDC educator in the event of unforeseen or exceptional circumstances, for example 'a genuine one-off unpredicted and unavoidable appointment'.

Create an offence (with attached penalty) that an approved provider must ensure the FDC educator assistant's activities are limited to the circumstances specified in the National Regulations (penalty \$10,000 for individuals and \$50,000 for others). Create a new offence (with attached penalty of \$2,000) that an FDC educator must ensure that the FDC educator assistant's activities are limited to the circumstances specified in the National Regulations.

It is further recommended that guidance is developed to further clarify appropriate use of FDC assistants.

7.6 RIS Proposal 7.6 — Principal office notifications

Options for principal office notifications

Option	Description
7.6A	No change
7.6B	An FDC service must notify the regulatory authority of changes to the principal office at least 14 days before the change AND The regulatory authority must amend or refuse to amend a new service approval within 14 days of the above notification and, if the principal office is also to be a venue or a residence, then the amended service approval must be issued before the commencement of any care at the venue or residence

It is proposed that:

- an FDC service must notify the regulatory authority of changes to the principal office at least 14 days before the change, with the FDC approved provider giving proof of address for the new principal office (e.g. contract or rental agreement); and
- the regulatory authority must amend or refuse to amend a new service approval within 14 days of the above notification (with regulatory authorities able to exercise discretion to increase the length of this period) and, if the principal office is also to be a venue or a residence, then the amended service approval must be issued before the commencement of any care at the venue or residence.

Consultation findings

Overall, in consideration of the consultation findings, this proposal for change received a **high** level of support.

All but one submission that spoke to this point were in support of the proposed changes to principal office notifications. Given the high level of support, there were minimal comments on the proposed options.

Several submissions supported Option 7.6B when a venue is attached to an FDC principal office, but questioned the role of such a regulation in traditional FDC settings where a principal office is not adjoined. The quote from Family Day Care Association of Queensland highlights this view:

'In relation to where education and care is being provided in a venue attached to an FDC principle office, then we agree the recommendation that the regulatory authority must be informed and can amend or refuse approval. If considering a traditional FDC Office, we question what is the areas of the National Law and National Regulations that assessing the principal office will enhance? ... We suggest that a criteria of what a coordination unit must provide to support the capacity of delivering quality outcomes for children would not be achieved by stipulating a physical place and facilities. '

— Family Day Care Association of Queensland submission to the RIS

Similarly, survey responses were also generally in support of the option, with 16 agreements to Option 7.6B for every one disagreement.

Table 33 Survey responses on support for change — Principal office notifications

Survey options	Survey
Support for retaining the current arrangements (no change)	42 (33%)
Support for changing the current arrangements (change)	85 (67%)
Total responses	127

Assessment of net benefit

The requirement under the National Law for an approved provider of an FDC service to notify the relevant regulatory authority of a change to the location of the principal office exists to support the provider in adequately coordinating its educators, and ensuring the wellbeing of children under its care (especially if the principal office is moved to a different jurisdiction). The wording in the National Regulations that notification occur within 7 days of becoming aware of the change, has created difficulties in determining what constitutes becoming 'aware'. To ensure regulatory authorities are able to provide adequate support and to avoid ambiguity in relation to the timing of notification, it is proposed that the National Regulations be amended so that an approved provider is required to notify the regulatory authority of any changes to the location of a principal office at least 14 days in advance prior to the change.

The improved regulatory oversight of FDC services is expected to create a benefit in terms of increased support of educators and reduced risks to children. Therefore, it is expected that this proposal will result in a net benefit for the sector.

Preferred option

The preferred option seeks to improve compliance with the National Law and National Regulations by widening a regulatory authority's powers of assessing and monitoring the suitability of FDC principal offices. Several FDC providers and peak bodies questioned the relevance of assessing principal offices as a means of assessing support for educators. However, given the potential risk to children of co-ordinators lacking an appropriate working space and office facilities, it is recommended that an alternative option is implemented. It is also recommended that the FDC approved provider be required give proof of address for the new principal office, for instance a contract or rental agreement, to confirm the address of the new premises.

PREFERRED OPTION: Alternative option

Amend the National Law and National Regulations so that:

A FDC approved provider must notify the regulatory authority of a change in location of the principal office of the FDC service at least 14 days before the change. The FDC approved provider must provide proof of address for the new principal office (e.g. contract or rental agreement).

A FDC provider is required to include in their application for a service approval, proof of address for the principal office (this would require amendment to regulation 26(f)).

7.7 RIS Proposal 7.7 — Powers of entry to FDC residences

Options for powers of entry to FDC residences

Option	Description
7.7A	No change
7.7B	Amend the National Law to allow authorised officers to enter FDC residences where the authorised officer <i>reasonably believes</i> that a service is operating at the residence at the time of entry

Section 199 of the National Law provides authorised officers with powers of entry for investigating an approved education and care service when the authorised officer reasonably suspects an offence has been committed against the National Law. This power of entry does not require a search warrant. However, section 199(4) does not permit this entry to FDC residences unless the service *is operating* at the time of the visit or where the occupier of the residence has given consent. Problems arise where an authorised officer cannot determine whether the service is operating at the time of the visit to then be able to enter.

It is proposed that section 199(4)(a) of the National Law be amended to allow authorised officers to enter FDC residences where the authorised officer *reasonably believes* that a service is operating at the residence at the time of entry.

Consultation findings

*Overall, in consideration of the consultation findings, this proposal for change received a **high** level of support.*

Option 7.7B was supported to a very high level in both submission and survey responses. For every one survey response in disagreement with Option 7.7B there were approximately 10.5 responses in agreement.

Given the high level of support, there were minimal comments on the proposed options. FDCA submitted that they support Option 7.7B in principle but that a clearly defined process by which the power may be applied is required. They also stated that their support would be contingent upon a regulation allowing an FDC educator to have access to a support person from the approved service during a visit.

Table 34 Survey responses on support for change — Powers of entry to FDC residences

Survey options	Survey
Support for retaining the current arrangements (no change)	27 (21%)
Support for changing the current arrangements (change)	100 (79%)
Total responses	127

Assessment of net benefit

The implementation of Option 7.7B is not expected to result in increased costs, as the change would simply increase flexibility in the entry of FDC residences for regulatory authorities and require no additional regulatory or administrative requirements.

The benefits associated with Option 7.7B include a reduction in delay costs for regulatory authorities as they will be able to enter residences more easily (where an authorised officer reasonably suspects an offence has been committed against the National Law). The major benefit resulting from the implementation of Option 7.7B is the increased safety of children.

Preferred option

Given the costs of the proposal are minimal, and the net benefit has the potential to be significant in regard to increased safety outcomes, it is recommended that the National Law be amended to allow authorised officers to enter a residence where they have reasonable belief that a service is operating or the FDC register indicates the service should be operating at the residence at the time of entry.

PREFERRED OPTION: Option 7.7B with a slight amendment

Amend section 199 of the National Law to allow authorised officers to enter a residence where, at the time of entry:

- the authorised officer reasonably believes that a service is operating, or
- the FDC register indicates the service should be operating at the residence at the time of entry (this would provide an additional basis for entry); and
- a ‘reasonable belief’ might include hearing or seeing signs of a number of children.

8. Other changes that will have a regulatory impact

8.1 RIS Proposal 8.1.1 — Approvals — assessment of capability — applicants

Options for approvals for assessment of capability of applicants

Option	Description
8.1.1A	No change
8.1.1B	Amend the National Law to specify that an applicant's capability to operate an education and care service in accordance with the National Law is an express consideration in determining applications for provider approval.

Under the current regulatory framework, an applicant's capability to operate an ECEC service is specified as a matter to be considered when determining a service approval application. This created confusion as to whether capability can also be assessed in determining provider approvals. Proposal 8.1.1B was put forward to ensure that the capability of an applicant to meet the requirements of the National Law was appropriately considered when assessing suitability of provider approvals.

Consultation findings

*Overall, in consideration of the consultation findings, this proposal for change received a **high** level of support.*

The vast majority of submission responses to the proposed options were in support of change. ELAA's submission voiced a concern about approvals being issued in the absence of quality training for providers and without adequate checks on levels of understanding about the needs of children and families. It was recommended by ELAA that consideration be given to setting minimum requirements for resource provision and that appropriate training and support be made available.

In contrast to the written submissions, the survey responses were quite evenly split, with just over half of the responses to this question supporting a change to current arrangements. However, when asked specifically whether they agreed or disagreed with Option 8.1.1B the survey responses were overwhelmingly more positive. For every response in disagreement with Option 8.1.1B, there were approximately 26.5 responses in agreement. Additionally, while 30 per cent of respondents strongly agreed with Option 8.1.1B, only 1 per cent strongly disagreed with the option.

Table 35 Survey responses on support for change — Approvals — assessment of capability — applicants

Survey options	Survey
Support for retaining the current arrangements (no change)	63 (42%)
Support for changing the current arrangements (change)	87 (58%)
Total responses	150

Assessment of net benefit

The costs associated with this proposal are dependent in part on how 'capability' is defined. While the application of the current definition would not be expected to result in increased costs to

applicants, there is a potential for increased costs depending on what is determined to be covered by an assessment of capability.

Benefits are expected to arise due to the increased certainty of the regulatory authority of the provider's capability to operate an ECEC service. Benefits will also accrue to the sector if this amendment also results in a decrease of approvals given to providers who lack the required capabilities — increasing the efficiency of the sector. As such, the ability to assess a provider's capability is expected to result in a net benefit.

Preferred option

Given the anticipated net benefit and the high level of stakeholder support, it is recommended an applicant's capability to operate an education and care service in accordance with the National Law may be taken into consideration in assessing fitness and propriety when determining applications for provider approval. Further guidance should also be developed for applicants and regulatory authorities to aid consistency in assessing capability.

PREFERRED OPTION: Alternative option

That the National Law be amended to specify that an applicant's capability to operate an education and care service in accordance with the National Law may be taken into consideration in assessing fitness and propriety when determining applications for provider approval.

8.2 RIS Proposal 8.1.2 — Approvals — assessment of capability — further information requests

Options for approvals assessment of capability — further information requests

Option	Description
8.1.2A	No change
8.1.2B	Expand section 14 of the National Law to allow regulatory authorities to seek further information with respect to an applicant's capability to operate an education and care service in accordance with the National Law when assessing applications for provider approval.

Proposal 8.1.2 was put forward to ensure that regulatory authorities have access to sufficient information by which to establish an applicant's capability when assessing applications for provider approval.

Consultation findings

*Overall, in consideration of the consultation findings, this proposal for change received a **high** level of support.*

The submission responses in relation to proposed options were supportive of change. This was also the case with the survey responses to this question which favoured changing the current arrangements. For every one survey response to this question which was in disagreement with Option 8.1.2B, there were approximately 13 submissions in agreement.

Table 36 Survey responses on support for change — Approvals — assessment of capability — further information

Survey options	Survey
Support for retaining the current arrangements (no change)	57 (38%)
Support for changing the current arrangements (change)	93 (62%)
Total responses	150

Assessment of net benefit

It had been thought that the existing provisions of the National Law did not allow regulatory authorities to seek further information from applicants for provider approval, however following the publication of the Consultation RIS, it has been determined section 14 of the National Law does allow regulatory authorities to seek further information in relation to an applicant's capability.

Preferred option

The desired capability for regulatory authorities to seek further information with respect to an applicant's capability to operate an education and care service is already encompassed in the National Law so no change is necessary.

PREFERRED OPTION: Option 8.1.2A

No change. Section 14 of the National Law is currently sufficient to allow regulatory authorities to seek further information with respect to an applicant's capability to operate an education and care service in accordance with the National Law when assessing applications for provider approval.

8.3 RIS Proposal 8.1.3 — Approvals — assessment of capability — reassessment

Options for approvals of assessment of capability — reassessment

Option	Description
8.1.3A	No change
8.1.3B	Expand section 21 of the National Law to encompass the reassessment of an approved provider's capability to operate an education and care service in accordance with the National Law.

Proposal 8.1.3 was developed to provide an avenue for regulatory authorities to reassess an approved provider's capability to operate an ECEC service in accordance with the National Law, in cases where such a reassessment is necessary.

Consultation findings

*Overall, in consideration of the consultation findings, this proposal for change received a **high** level of support.*

The submission responses in relation to proposed options were supportive of change. Similarly, the survey responses to this question moderately favoured changing the current arrangements and

there was minimal disagreement with the proposed Option 8.1.3B. Twenty-five per cent of survey responses strongly agreed with Option 8.1.3B, compared with 3 per cent which strongly disagreed with the option.

Table 37 Survey responses on support for change — Approvals — assessment of capability — reassessment

Survey options	Survey
Support for retaining the current arrangements (no change)	61 (41%)
Support for changing the current arrangements (change)	89 (59%)
Total responses	150

Assessment of net benefit

There are expected to be some administrative costs associated with the reassessment of an approved provider's capabilities to operate an ECEC service in accordance with the National Law. However, it is not anticipated that regulatory authorities will exercise the right to reassess approved providers except in cases where there is sufficient evidence to question an approved provider's capability. As such, the costs are expected to be outweighed by the benefits accrued in the form of increased certainty for the regulatory authorities and minimised risk to children through the removal of approval for providers who lack the capability to operate in accordance with the National Law. If appropriately administered, the implementation of Option 8.1.3B is anticipated to result in a net benefit to the sector.

Preferred option

Note section 21 of the National Law is already sufficient to encompass the reassessment of an approved provider's capability to operate an education and care service in accordance with the National Law.

PREFERRED OPTION: Option 8.1.3A

No change. Note that section 21 of the National Law is currently sufficient to encompass the reassessment of an approved provider's capability to operate an education and care service in accordance with the National Law.

8.4 RIS Proposal 8.1.4 — Approvals — maximum children numbers as a service approval condition

Options for approvals — maximum children numbers as a service approval condition

Option	Description
8.1.4A	No change
8.1.4B	Amend section 51 of the National Law to specify that the maximum number of children specified on a service approval forms part of the conditions of the service approval.

Under the current regulatory framework there is no specific offence for exceeding the maximum number of children specified in a service approval. This limits the ability of regulatory authorities to react to providers which exceed maximum child numbers. As such, Option 8.1.4B was developed to

ensure the maximum child numbers form a condition of service approval. Under the proposed regulatory framework, exceeding maximum child numbers would be a breach of the service approval conditions and will attract the associated penalties.

Consultation findings

*Overall, in consideration of the consultation findings, this proposal for change received a **high** level of support.*

The submission responses in relation to proposed options were supportive of change. Similarly, the survey responses to this question moderately favoured changing the current arrangements and there was minimal disagreement with the proposed Option 8.1.4B. Twenty-three per cent of survey responses strongly agreed with Option 8.1.4B, compared with 3 per cent which strongly disagreed with the option.

Table 38 Survey responses on support for change — Approvals — maximum children numbers as a service approval condition

Survey options	Survey
Support for retaining the current arrangements (no change)	64 (43%)
Support for changing the current arrangements (change)	86 (57%)
Total responses	150

Assessment of net benefit

The costs of implementing Option 8.1.4B are expected to be limited to the initial costs associated with policies and procedures. Conversely, benefits will accrue to the regulatory authorities addressing instances of services exceeding their maximum number of places. The sector is also expected to benefit from the follow-on impacts of this, including increased outcomes for child safety and quality service provision.

Given the nature of these benefits and the difficulties inherent in quantifying them, it is not clear whether the implementation of Option 8.4.1B would result in a net benefit. However, given the positive feedback from the sector, it is recommended that section 51 be amended.

Preferred option

Given the anticipated net benefit and the high level of stakeholder support, the amended option below is the preferred option.

PREFERRED OPTION: Amended option

That the National Law be amended to specify that the maximum number of children specified on a service approval forms part of the conditions of the service approval. It is not a breach of the condition regarding the maximum number of children where a child, or two more children from the same family, are being cared for by the service in an emergency (similar to the current regulation 123 regarding educator to child ratios) and the approved provider is satisfied on reasonable grounds that this will not affect the health, safety and wellbeing of other children at the service.

8.5 RIS Proposal 8.2.1 — Revocation of waivers

Options for revocation of waivers

Option	Description
8.2.1A	No change
8.2.1B	Amend regulation 43 to provide for the revocation of a service waiver to take effect 14 days after notifying the approved provider, or another period by agreement.

Under the current framework, if a service waiver is revoked at the discretion of the regulatory authority, it takes 60 days to take effect after the provider is notified. Option 8.2.1B was put forward to ensure that services did not operate under amended conditions for a longer time period than necessary, increasing the timeliness in which matters were rectified in response to a waiver being revoked. It was contended that this is a desirable regulatory response where an approved provider is no longer complying with any conditions of the waiver, or taking appropriate measures to protect the safety and wellbeing of children.

Consultation findings

*Overall, in consideration of the consultation findings, this proposal for change received a **mixed** level of support.*

The submission responses in relation to proposed options were generally supportive of change. However, the Catholic Education Office of Western Australia stated they did not support the amendment to 14 days as this differed too significantly from the current allowance of 60 days and would potentially not allow a service sufficient time to rectify the matter as required. They proposed that 30 days may be more reasonable. It should be noted that Option 8.2.1B states the revocation can also take place after ‘another period by agreement’, so there is a level of flexibility inherent in the proposal.

The survey responses to this question were quite evenly divided, with a high number of neutral responses, but overall favoured changing the current arrangements. For every one survey response in disagreement with Option 8.2.1B there were approximately three responses in agreement.

Table 39 Survey responses on support for change — Revocation of waivers

Survey options	Survey
Support for retaining the current arrangements (no change)	41 (45%)
Support for changing the current arrangements (change)	50 (55%)
Total responses	91

Assessment of net benefit

Any cost associated with this option is restricted to the *additional* cost of responding within a shorter time frame, which is expected to be insignificant.

The benefit of Option 8.2.1B is the increased flexibility of regulatory authorities to revoke waivers in a timelier manner in circumstances where an approved provider is either no longer complying with waiver conditions or taking appropriate measures to protect children’s safety and wellbeing. As such, the implementation of Option 8.2.1B is expected to result in improved safety outcomes for children.

Given the costs associated with the implementation of Option 8.2.1B are low, and the benefits relate directly to improved outcomes for children, it is anticipated that this proposal will result in a net benefit.

Preferred option

Given the anticipated net benefit and the risk to children associated with non-compliance to waiver conditions, Option 8.2.1B is the preferred option.

PREFERRED OPTION: Option 8.2.1B

Amend the regulation concerning the prescribed period in relation to a revocation of a service waiver to provide for the revocation of a service waiver to take effect 14 days after notifying the approved provider, or another period by agreement.

8.6 RIS Proposal 8.3.1 — Supervisors

Options for supervisors

Option	Description
8.3.1A	No change
8.3.1B	<ul style="list-style-type: none">(a) Amend the National Law and National Regulations to designate the approved provider as the body responsible for appointing a suitably skilled educator who is prescribed by law to be 18 years or older;(b) In support of the approved provider's role, publish guidelines of appropriate types of qualifications, skills or experience and evidence of fitness and propriety in determining who would be suitably skilled. The guidance would also emphasise the importance of making sure providers are aware of any changes affecting the fitness and propriety of a nominated supervisor/person in day to day charge (PIDTDC); and(c) Make further changes to the National Law to signal to providers the importance of making considered decisions in appointing the nominated supervisor/PIDTDC such as amending section 161 to provide that each service must have a nominated supervisor 'who is fit and proper, and has appropriate skills, to supervise the service.'

Proposal 8.3.1B was developed to clarify the process for services selecting nominated supervisors and persons in charge, particularly in light of the proposed removal of supervisor certificates.

Consultation findings

*Overall, in consideration of the consultation findings, this proposal for change received a **mixed** level of support.*

The submission responses in relation to proposed options were evenly divided, with just less than half of the comments in support of the change.

Submissions that were not in favour of changing the current practices in regard to selecting a nominated supervisor stated that the regulatory authority should remain responsible for this process to avoid the appointment of unsuitable staff. Alternatively, it was suggested that mechanisms could be introduced to ensure that the fitness, propriety and suitability of nominated supervisors are properly assessed prior to the appointment of the role.

The Community Child Care Association advocated that mandatory qualifications (Diploma or higher) and mandatory level of experience (at least two years) could be introduced for the nominated supervisor role. They supported the development of guidelines to assist in decision making but contended that unless these minimum requirements are introduced alongside the proposed amendment, removing any checks by the regulatory authority poses ‘an unacceptable risk to the health, safety and wellbeing of children’. Similarly, Australian Community Children’ Services stated that they would not support options for change unless mandated minimum qualifications or an alternative mechanism to assess the fitness of a nominated supervisor was introduced. It is noted however, that another RIS would be required to introduce a mandatory minimum qualification.

There was also opposition from several bodies in NSW, including the Community Child Care Co-Operative (NSW) who stated that this was a weakening of the existing regulations. They contended that ‘the regulatory authority in NSW has always had the role of approving the nominated supervisor appointed and we believe this should continue. We believe the Approved Provider should be authorised to determine the Responsible Person at any one time’.

The survey responses to this question favoured changing the current arrangements and there was minimal disagreement with the proposed Option 8.3.1B. While 29 per cent of survey responses to this question strongly agreed with Option 8.3.1B, only 4 per cent strongly disagreed.

Table 40 Survey responses on support for change — Supervisors

Survey options	Survey
Support for retaining the current arrangements (no change)	58 (36%)
Support for changing the current arrangements (change)	101 (64%)
Total responses	159

Assessment of net benefit

Benefits are expected to accrue to services due to removed delay costs, as they would be able to assume the power of appointing a nominated supervisor or persons in charge directly. There is the potential for costs to arise through the removal of regulatory oversight resulting in the appointment of unsuitable nominated supervisors or persons in charge. However, with the appropriate guidance provided to the sector, it is likely that the approved provider is best placed to determine the appropriateness of potential nominated supervisors and persons in charge. As such, the implementation of Option 8.3.1B is expected to result in a net benefit.

Preferred option

While it is acknowledged that there was some degree of opposition to Option 8.3.1B in consultation, in the context of the suite of proposed options made regarding supervisors, the general consensus among consultation respondents was that the responsibility of assessing the appropriateness of a nominated supervisor or PIDTDC was best placed with the provider. As such, the opposition to Option 8.3.1B is at odds with the overwhelming support for Proposal 2.1, perhaps caused by some confusion in the wording. In light of this, and the anticipated net benefit, Option 8.3.1B as amended below is the preferred option. Some additional wording has been included to clarify when and how appointments must be made.

PREFERRED OPTION: Option 8.3.1B with amendments

- Amend the National Law and National Regulations to provide that the approved provider is responsible for appointing an individual person aged 18 years or older, who is 'fit and proper and has suitable skills', as the nominated supervisor/PIDTDC noting;
 - an approved provider does not have to appoint a PIDTDC if a nominated supervisor or approved provider is to be the responsible person for the purpose of section 162 of the National Law
 - a nominated supervisor may also appoint a PIDTDC.
- To signal to approved providers the importance of making considered decisions in appointing the nominated supervisor/PIDTDC, amend the National Law and National Regulations to provide that the service must have a nominated supervisor who is 'fit and proper, and has suitable skills', to supervise the service.
- In support of the approved provider's role in appointing a nominated supervisor/PIDTDC, publish guidelines to assist providers in determining 'fitness and propriety' and what are the 'suitable skills' for a nominated supervisor/PIDTDC including compliance with working with children laws. The guidance would also emphasise the importance of making sure approved providers are aware of any changes affecting the 'fitness and propriety' of a nominated supervisor/PIDTDC. Guidance would also be required to assist nominated supervisors in appointing a PIDTDC.

8.7 RIS Proposal 8.3.2 — The power to restrict a person from being a nominated supervisor or PIDTDC

Options for powers of the regulatory authorities

Option	Description
8.3.2A	No change
8.3.2B	Amend the National Law to give the regulatory authority a mechanism to restrict a person from being the nominated supervisor/PIDTDC either entirely or subject to certain conditions, with an appropriate offence and penalty regime.

In light of the increased flexibility proposed to be allocated to services with the recommended implementation of Options 2.1B and 8.3.1B, allowing the appointment of nominated supervisors and PIDTDC without regulatory oversight, Option 8.3.2B was developed in order to enable regulatory authorities to restrict a person from being the nominated supervisor or person in charge. The rationale behind this option is that regulatory authorities could still have a level of oversight, where necessary, while still retaining flexibility for services in most cases.

Consultation findings

*Overall, in consideration of the consultation findings, this proposal for change received a **high** level of support.*

The submission responses in relation to proposed options were supportive of change. However several submissions to the RIS did not support Option 8.3.2B in its current form, contending that full understanding of the implications of such a change requires further consultation with the sector.

Goodstart Early Learning submitted that the proposed change has the potential to undermine or lead to duplication with internal disciplinary processes, creating unnecessary and inefficient burden. In addition, they argued that 'the proposed changes for nominated supervisors put appropriate

processes in place for providers to adequately investigate and determine the fitness and propriety of staff and they should be given responsibility for managing their staff’.

The survey responses to this question generally favoured changing the current arrangements and there was minimal disagreement with the proposed Option 8.3.2B. For every one survey response in disagreement with Option 8.3.2B, there were approximately 9.5 responses in agreement.

Table 41 Survey responses on support for change — Powers of the regulatory authorities

Survey options	Survey
Support for retaining the current arrangements (no change)	58 (38%)
Support for changing the current arrangements (change)	101 (62%)
Total responses	159

Assessment of net benefit

Given historical incidents of the cancellation or suspension of supervisor certificates is low (four cancellations and one involuntary suspension in 2013), it is not anticipated that the impact on the sector will be large. If a central database is introduced this will impose some cost on ACECQA and the regulatory authorities in the form of one-off establishment costs and ongoing maintenance. However, these costs would be expected to be offset by an increased ability to monitor restricted persons. A net benefit is expected to arise from the ability to restrict the actions of unsuitable nominated supervisors and PIDTDC, resulting in improved safety and quality of service provision to children.

Preferred option

Given the anticipated net benefit and the high level of stakeholder support, Option 8.3.2B is preferred. To ensure the mechanism fulfils its policy intent of restricting people deemed unsuitable to be nominated supervisors, it is suggested that a central database be developed to list all people subject to conditions or prohibition.

PREFERRED OPTION: Alternative option

- Amend the prohibition notice provisions in the National Law to give the regulatory authority the power to restrict a person from being the nominated supervisor either entirely or subject to such conditions as the regulatory authority considers appropriate; for example, that it is inappropriate for a specified person to be appointed as a nominated supervisor of a service.
- Note that section 192 of the National Law will apply to a regulatory authority’s decision to restrict a person from being the nominated supervisor.

Note that section 272 of the National Law will apply to enable the National Authority and a regulatory authority to disclose to approved providers information about whether a person is subject to a prohibition notice.

8.8 RIS Proposal 8.3.3 — Limit on the number of nominated supervisors

Options for removing the limit on the number of nominated supervisors

Option	Description
8.3.3A	No change
8.3.3B	Amend the National Law to remove the limit on the number of nominated supervisors that may be appointed at one time for each service on the basis that they are jointly responsible for the service.

Option 8.3.3B, to remove the limit on the number of nominated supervisors that may be appointed at one time for each service, was put forward as an option to increase the flexibility for services in meeting NQF requirements.

Consultation findings

*Overall, in consideration of the consultation findings, this proposal for change received a **high** level of support.*

The submission responses in relation to the proposed options were supportive of change. However, several submissions that were in support of removing the limit on the number of nominated supervisors per service also stated that there needed to be clear mechanisms for determining which person is in charge at any one time.

The survey responses to this question also favoured changing the current arrangements (approximately two-thirds of responses were in support of change) and there was minimal disagreement with the proposed Option 8.3.3B. For every one survey response in disagreement with Option 8.3.3B, approximately 3.5 were in agreement.

Table 42 Survey responses on support for change — removing the limit on the number of nominated supervisors

Survey options	Survey
Support for retaining the current arrangements (no change)	53 (33%)
Support for changing the current arrangements (change)	106 (67%)
Total responses	159

Assessment of net benefit

There would be additional costs to regulatory authorities with the introduction of Option 8.3.3B, as the number of nominated supervisors overall would be expected to increase in response to the removal of the limit. To what extent these costs will increase is difficult to determine in light of the uncertainty surrounding the number of additional nominated supervisors and the fact that the reduced regulation of nominated supervisors proposed in other sections of this Decision RIS will result in a cost of regulation that will differ from historical levels.

The benefits associated with the implementation of Option 8.3.3B are primarily related to increased flexibility for services in meeting requirements under the NQF.

As services would only increase their number of nominated supervisors if they perceived this would be of benefit to the service, it is expected that Option 8.3.3B will result in a net benefit.

Preferred option

Given the anticipated net benefit and the high level of stakeholder support, Option 8.3.3B is the preferred option.

PREFERRED OPTION: Option 8.3.3B with amendment

Amend the National Law to allow more than one (with a minimum of at least one) nominated supervisor to be appointed at the same time for each service.

8.9 RIS Proposal 8.3.4 — Consenting to the role of nominated supervisor or PIDTDC

Options for consenting to the role

Option	Description
8.3.4A	No change
8.3.4B	Amend the National Law to remove requirement for written consent if the approved provider, including a person with management or control, is to fulfil the role of nominated supervisor or PIDTDC.

Proposal 8.3.4 was developed as an effort to reduce unnecessary administrative burden

Consultation findings

*Overall, in consideration of the consultation findings, this proposal for change received a **mixed** level of support.*

Approximately three-quarters of responses to the proposed options in submissions were in favour of the change.

Several submissions which did not support the proposed changes to written consent stated that this was because written consent held some benefits in fostering a clear understanding between the nominated supervisor and associated staff. Community Child Care Association contended that through signing the document the supporting educator is agreeing to take responsibility for compliance when the nominated supervisor is absent, and this process aids in highlighting understanding the significance of the role.

Uniting Care stated that they support the removal of written consent requirements but believes that regulatory authorities should still be notified of the appointment.

In contrast to the written submissions, the survey responses to this question slightly favoured retaining the current arrangements ('no change') rather than the 'change' option (see Table 43 below). However, when asked specifically whether they agreed or not with Option 8.3.4B, more survey respondents were in agreement with the option than disagreement. For every one survey response in disagreement with Option 8.3.4B, approximately 1.5 responses were in agreement with it.

Table 43 Survey responses on support for change — Consenting to the role

Survey options	Survey
Support for retaining the current arrangements (no change)	89 (56%)
Support for changing the current arrangements (change)	70 (44%)
Total responses	159

Assessment of net benefit

There are no costs associated with the implementation of Option 8.3.4B as the option does not require any additional actions, simply a removal of unnecessary administrative burden.

The benefits associated with the implementation of Option 8.3.4B are expected to accrue to services in the form of time saved through the removal of the requirement for written consent. Similarly, regulatory authorities are expected to benefit through reduced monitoring requirements.

Given the absence of costs, it is expected that even minimal benefits arising from the decreased administrative burden will result in a net benefit.

Preferred option

The proposed options were received with mixed levels of support during the consultation period, which can be attributed to some level of confusion in the sector regarding the implications of the options. It was put forward in several submissions that written consent was an important process for nominated supervisors as it supported a clear understanding for the supervisor regarding the nature of the responsibility they were undertaking.

In response to this, it suggested that Option 8.4.3B be further clarified to ensure the proposed change is properly understood. Under the option, the written consent requirement remains for all nominated supervisors unless the approved provider is an individual (and not an entity) who is to be the nominated supervisor. It is considered that written consent is not required where a person is to be appointed as the PIDTDC as, unlike nominated supervisors, there are no other legal consequences that flow from the appointment. As such, the reference to PIDTDC has been removed from Option 8.3.4B.

PREFERRED OPTION: Option 8.3.4B (with PIDTDC removed and amendment)

Amend the National Law to remove the requirement for written consent if the approved provider, as an individual applicant, is to also fulfil the role of nominated supervisor.

It is also noted that in all other circumstances written consent is to be required where a person is to be appointed as the nominated supervisor.

8.10 RIS Proposal 8.3.5 — Notifications regarding nominated supervisors

Options for notifications

Option	Description
8.3.5A	No change
8.3.5B	Amend the National Law to: <ul style="list-style-type: none">(a) designate the approved provider with responsibility for notifying the regulatory authority if the nominated supervisor changes or if there is a change in a nominated supervisor's name or contact details. In amending the National Law, remove duplication between existing notification provisions, which are currently set out in two different parts of the National Law; and(b) remove the existing notification requirements to regulatory authorities re fitness and propriety.

Option 8.3.5B was developed as an attempt to streamline the current notification requirements and to ensure the notification process is suitable in light of other changes to the processes for appointing a nominated supervisor. As the regulatory authorities will no longer be distributing supervisor certificates or appointing nominated supervisors, it is appropriate to introduce a mechanism to ensure regulatory authorities hold up to date information regarding the nominated supervisor at each service. Additionally, this new requirement will be offset by the removal of existing notification requirements for nominated supervisors.

Consultation findings

*Overall, in consideration of the consultation findings, this proposal for change received a **mixed** level of support.*

The majority of submissions in relation to the proposed options were in support of Option 8.3.5B. There were no significant objections made. Conversely, the survey responses to this question only slightly favoured changing the current arrangements as opposed to the 'no change' option. When asked specifically whether they agreed or disagreed with Option 8.3.5B, the survey responses were more positive. For every one survey response in disagreement with Option 8.3.5B there were approximately 3.5 responses in agreement with the option.

Table 44 Survey responses on support for change — Notifications

Survey options	Survey
Support for retaining the current arrangements (no change)	69 (43%)
Support for changing the current arrangements (change)	90 (57%)
Total responses	159

Assessment of net benefit

The transfer of the requirement to notify the regulatory authority if the nominated supervisor's name or contact details change will result in an additional administrative cost for approved providers in regard to compliance. However, this must be understood in context of the suite of changes relating to nominated supervisors, which, as a result of the removal of supervisor certificates, will result in an overall reduction of administrative burden.

There is also expected to be a reduction in administrative burden (a benefit to the sector) as a result of the removal of the notification requirements in regard to fitness and propriety. While the net benefit of the simultaneous decrease and increase in administrative burden expected as a result of changes proposed in Option 8.3.5B is not clear, it is expected that the cumulative impact of the suite of changes relating to nominated supervisors will be a reduction in administrative burden. Additionally, the removal of regulatory oversight in the appointment of nominated supervisors requires a replacement mechanism to be introduced to keep regulatory authorities informed of nominated supervisor circumstances.

Preferred option

There was some degree of confusion relating to the implications of the suggested change, with some submissions stating non-support for Option 8.3.5B on the basis that regulatory authorities should hold information in regard to the identities of the nominated supervisor at each service. This information will be held by regulatory authorities.

Some submissions also expressed concern at the removal of the requirements to notify the regulatory authority on issues regarding fitness and propriety. However, this is deemed inconsistent with the general shift of responsibility of the assessment of appropriateness of nominated supervisors from regulatory authorities to services.

Given the general consultation support for a lessening of regulatory oversight in the appointment of nominated supervisors, and the requirement to introduce some form of notification process in light of other changes to the nominated supervisor process, Option 8.3.5B is the preferred option.

PREFERRED OPTION: Option 8.3.5B

Amend the National Law to:

- (a) make the approved provider responsible for notifying the regulatory authority if there is a new nominated supervisor or if there is a change in a nominated supervisor's name or contact details; and**
- (b) remove the existing notification requirements to regulatory authorities regarding fitness and propriety of certified supervisors.**

8.11 RIS Proposal 8.3.6 — Record keeping

Options for record keeping

Option	Description
8.3.6A	No change
8.3.6B	Amend the National Law and National Regulations to: Expand current record-keeping requirements for nominated supervisors to PIDTDC and also to include FDC services. A consequential amendment is required for removal of the reference to the application process and certificate number.

Option 8.3.6B was developed to increase consistency of record keeping across all ECEC service types.

Consultation findings

Overall, in consideration of the consultation findings, this proposal for change received a **high** level of support.

The vast majority of submissions in relation to the proposed options were in support of Option 8.3.6B.

Table 45 Survey responses on support for change — Record keeping

Survey options	Survey
Support for retaining the current arrangements (no change)	60 (38%)
Support for changing the current arrangements (change)	99 (62%)
Total responses	159

Assessment of net benefit

The proposed requirements are already met in accordance with regulation 147 concerning the record keeping for staff members including PIDTDC in their capacity as educators. There would be no additional benefit by implementing Option 8.3.6B.

Preferred option

No change. Proposed option 8.3.6B concerning the extension of the current record keeping requirements for nominated supervisors under regulation 146 to PIDTDC is not required as regulation 147 concerning the record keeping requirements for staff members applies to PIDTDC in their capacity as educators. Accordingly, the preferred option is no change. In this context it is also noted that the record keeping requirements in relation to nominated supervisors will remain unchanged.

PREFERRED OPTION: Option 8.3.6A no change

8.12 RIS Proposal 8.3.7 — Terminology

Options for terminology

Option	Description
8.3.7A	No change
8.3.7B	Amend the National Law to remove references to supervisor certificates and certified supervisors and adopt a new term for people who have been deemed suitable to supervise a service and who may be appointed as nominated supervisor or placed in day to day charge (e.g. acting supervisor, supervisor, and duty supervisor).

Option 8.3.7B was developed to ensure that the National Law reflects the appropriate terminology in relation to the suite of changes proposed to the appointment of nominanted supervisors.

Consultation findings

Overall, in consideration of the consultation findings, this proposal for change received a **high** level of support.

The majority of submissions made in relation to the proposed options were in support of Option 8.3.7B. Quite a number of submissions noted that they use the term ‘responsible person’ and recommended that this phrase be adopted sector-wide to refer to people deemed suitable to supervise a service.

The survey responses to this question were also generally in favour of changing the current arrangements.

Table 46 Survey responses on support for change — Terminology

Survey options	Survey
Support for retaining the current arrangements (no change)	59 (37%)
Support for changing the current arrangements (change)	100 (63%)
Total responses	159

Assessment of net benefit

This proposal, designed to increase clarity for both the sector and regulatory authorities, is expected to result in minimal costs. The overall impacts of the proposal are expected to be low as the change is primarily a clarification amendment. However, as the costs are negligible any benefits which stem from increased clarity will be understood as net benefits.

Preferred option

Given the anticipated net benefit and the high level of stakeholder support, Option 8.3.7B is the preferred option. Consideration has been given to either adopting a new term to describe people who have been appointed as a PIDTDC of the service for the purpose of section 162(1) of the National Law, noting that these persons are not the nominated supervisor or approved provider; for example, acting supervisor, however it is recommended that the existing wording be retained to minimise change for the sector.

PREFERRED OPTION: Option 8.3.7B with amendment

Amend the National Law and National Regulations to remove references to supervisor certificates and certified supervisors, including all of Part 4 of the National Law concerning supervisor certificates.

8.13 RIS Proposal 8.3.8 — Child protection and nominated supervisors

Options for child protection and nominated supervisors

Option	Description
8.3.8A	No change
8.3.8B	Amend the National Law and National Regulations to provide that nominated supervisors and PIDTDC of an education and care service must have undertaken child protection training.

Option 8.3.8B arose after New South Wales was identified as the only jurisdiction to mandate the undertaking of child protection training for specified persons working in ECEC services under the

National Law. Option 8.3.8B was proposed as a method of improving the safety and quality in service provision to children through the increased ability of nominated supervisors and PIDTDC to identify children at risk.

Consultation findings

*Overall, in consideration of the consultation findings, this proposal for change received a **high** level of support.*

Option 8.3.8B was received with very strong support through both submissions and the survey.

Though the option for change received a very high level of support, several submissions noted that, in order to facilitate this change, training for child protection would need to be made readily available and financially accessible for services. There were particular concerns about the ability of rural and remote services to access training.

It was also advocated in several submissions that this proposal be extended to require all educators to undertake child protection training. It was stated in Queensland consultation sessions that this was a sensible approach given the close proximity of educators to children and the fact that, without training, educators may not be able to recognise signs of harm. C&K noted that they require all educators who work with children to have child protection training on an annual basis and that the amendment may therefore be reducing the staff who are required to have an awareness of child protection law.

As stated, the survey responses were strongly in support of Option 8.3.8B, with 52 per cent of respondents to this question strongly agreeing with the option for change and only 1 per cent strongly disagreeing. For every one survey response in disagreement with Option 8.3.8B, there were approximately 11 responses in agreement.

Table 47 Survey responses on support for change — Child protection and nominated supervisors

Survey options	Survey
Support for retaining the current arrangements (no change)	57 (36%)
Support for changing the current arrangements (change)	102 (64%)
Total responses	159

Assessment of net benefit

The adoption of Option 8.3.8B will not have a large impact on the sector as it prompts nominated supervisors and PIDTDC to comply with existing requirements of state and territory child protection legislation. The benefit is improved safety for children.

Preferred option

Given the strong support for Option 8.3.8B found in consultation, it is recommended that the proposal is implemented in a way that aligns with relevant state based child protection legislation.

An implementation issue for this proposed change is that child protection law is currently jurisdictionally based and the provisions differ across states and territories, making it difficult to

approve nationally available child protection courses that are capable of addressing complex differences in law across jurisdictions. To address this issue, it may need to be clarified that the training needs to be relevant to the jurisdiction in which the nominated supervisor or PIDTDC is working.

PREFERRED OPTION: Option 8.3.8B with amendments

- Amend the National Law and National Regulations to require that nominated supervisors and PIDTDC of an education and care service must have undertaken child protection training as is required by the relevant state and territory in which the nominated supervisor and PIDTDC is working. (This may be a requirement under law or under a non-statutory requirement such as a state government memorandum of understanding).
- Breach of this requirement is not an offence under the National Law.

8.14 RIS Proposal 8.4.1 — 12 weeks Early Childhood Teacher Leave Provision — Extending the scope to include resignation

Options for extending the scope to include resignation

Option	Description
8.4.1A	No change
8.4.1B	<p>(a) Amend regulation 135 to allow providers to also utilise this provision after the resignation of an ECT. This would also apply to services that engage a full-time or full-time equivalent (FTE) ECT. Adopting this change provides further flexibility to providers without compromising the objectives of the National Law or the overall policy intent of regulation 135.</p> <p>(b) It is recommended that a savings provision for NSW is included in the amendments so this change does not apply.</p>

Under the current regulatory framework, a service provider can be without an early childhood teacher (ECT) for up to 12 weeks in the case of illness or long service leave. Option 8.4.1 was put forward in response to sector feedback that the provision would also be useful for services in the case of resignation.

Consultation findings

*Overall, in consideration of the consultation findings, this proposal for change received a **mixed** level of support.*

The submission responses to the proposed options were divided, with approximately half supporting the change and half opposing the extension of scope. Support for Option 8.4.1B was primarily cited as relating to the difficulties in finding ECT in short spaces of time. Online survey comments indicated that this option would be of particular significance to rural and remote services, which commonly face difficulties in attracting qualified ECTs.

The significant number of submissions that did not support Option 8.4.1B contended that allowing further exemptions to the requirement for an ECT would compromise the quality objectives of the NQA. In fact, the Independent Education Union called for a removal of the current leave provision for annual leave and illness. It was noted in the submission from Kurri Kurri & District Preschool Kindergartens that if such a regulation existed within the school system, it would not be tolerated.

‘An early childhood teacher is required to support quality education practices — which we believe is critical. The concept of allowing services to operate without a teacher is a move backwards, not forwards in the drive for quality.’

— Lady Gowrie submission to the RIS

Submissions that did not support Option 8.4.1B advocated that the requirement for an ECT should remain and that temporary waivers can be used by services in exceptional circumstances. The amendment of this regulation may result in services facing less incentive to replace teachers in a timely manner.

There were also several objections to the savings provision put in place for New South Wales. For instance, the ACA noted that ‘National Regulations should permit services to voluntarily operate above National Standard level but not be forced to do so by a specific jurisdiction’.

The survey responses to this question were generally in favour of changing the current arrangements. For every one survey response in disagreement with Option 8.4.1B, there were approximately four responses in agreement.

Table 48 Survey responses on support for change — 12 weeks ECT leave provision — Extending the scope to include resignation

Survey options	Survey
Support for retaining the current arrangements (no change)	47 (31%)
Support for changing the current arrangements (change)	105 (69%)
Total responses	152

Assessment of net benefit

Option 8.4.1B may result in reduced costs to services when an ECT resigns. The reduction in cost will depend on the difference in wages of the ECT and the educator who temporarily fills the vacant position to maintain educator to child ratios, the period it takes for another ECT to fill the position and whether the cost of a temporary waiver is incurred. Given the size of the wage cost difference, the frequency of ECT resignation and recruiting practices, any savings to services are unlikely to be significant.

Should teachers who resign be replaced more slowly, there may be an impact on the learning of the children they teach or the educational leadership of the service.

Preferred option

Queensland, Western Australia, Tasmania and the Australian Capital Territory are to introduce transitional provisions to expire on 31 December 2021 in order to implement Option 8.1.4B(a). In other states and territories it is recommended that no change be made to the 12 weeks ECT Leave Provision.

In relation to the 12 weeks ECT leave, the current provision will be clarified so that this time period is expressed in the future as 60 days – with the 60 days being a combined total of periods of absence and that this will apply in the case of any absence, not just ‘leave’ (refer [Appendix A](#)).

PREFERRED OPTION: Alternative option

Amend the National Regulations to introduce jurisdiction specific transitional regulations for Queensland, Western Australia, Tasmania and the Australian Capital Territory, enabling approved providers in those jurisdictions to use regulation 135 in the event of the resignation of an ECT, with the transitional provisions expiring on 31 December 2021 unless extended. This arrangement is to be reviewed as part of a future review of the NQA.

Clarify the time period of 12 weeks in the existing provision so that it is expressed as 60 days, with the 60 days being a combined total of periods of absence and that this will apply in the case of any absence, not just 'leave'.

8.15 RIS Proposal 8.4.2 — Educator breaks

Options for educator breaks

Option	Description
8.4.2A	No change
8.4.2B	It is proposed that guidance on educator breaks is amended to make clear that service providers must comply with their legal obligations and must meet prescribed ratio requirements at all times, subject to jurisdiction specific transitional arrangements.

The current National Law requires approved providers and nominated supervisors to ensure prescribed minimum educator to child ratios. However, excepting current savings and transitional provisions, there is currently no industry specific regulatory framework on the issue of educator breaks. The approach to educator breaks differs across jurisdictions, with a number of states and territories using transitional and savings provisions and others using temporary waivers. The guidance material to the National Law and National Regulations provides that educators at centre-based services may take up to 30 minutes per day 'off the floor' without backfilling and will not be considered in breach of prescribed ratio requirements.

Proposal 8.4.2B was put forward to introduce a nationally consistent approach to educator breaks which did not undermine the policy intent of prescribing minimum baseline standards for educator to child ratios to be in place at all times.

Consultation findings

*Overall, in consideration of the consultation findings, this proposal for change received a **mixed** level of support.*

The majority of submission responses were in favour of supporting the change, however several notable objections were made.

Goodstart Early Learning did not support Option 8.4.2B in their submission, disagreeing with the suggestion that existing flexibility undermines the policy intent of prescribing minimum baseline standards and instead advocating that it provided a clear framework for a common sense approach. The submission also contended that this option was not workable in practice and would result in significant regulatory costs that have not been fully considered. For instance, the amendment of the regulation would require educators to be covered when on toilet breaks, which would result in significant increases in labour costs. They also stated that 'the temporary waivers proposed in the

RIS appear to have extremely narrow application ... and would not, in practice, provide any flexibility for mainstream services like Goodstart’.

The ACA also stated that the current system has been ‘working successfully’ and that such a change would ‘cause considerable increase in fees to families’. In this vein, a number of submissions supported this contention that the implications of such a change have not been fully considered and require further research. While supporting the objective of the change, several submissions noted that in its current form Option 8.4.2B could not be implemented without a significant impact on services.

The Australian Education Union submitted that such a change would particularly impact Victoria. The submission states that the advice of regulatory authorities, provided at page 89 of the Guide to the National Law and National Regulations that ‘the approach of regulatory authorities will be to allow each educator to take up to 30 minutes off the floor per day without being backfilled’ has been used in the development of service timetables and staffing. The Australian Education Union suggests that if the regulations are amended as proposed, the ability for services in Victoria to meet Universal Access would be greatly impacted.

In response to the above comments, it was apparent that there was some degree of misinterpretation of the proposed changes. To clarify, no regulation would be introduced that would require educators to be covered during toilet breaks and urgent phone calls.

The survey responses to this question were generally in favour of changing the current arrangements. For every one survey response in disagreement with Option 8.4.2B, there were approximately three responses in agreement.

Table 49 Survey responses on support for change — Educator breaks

Survey options	Survey
Support for retaining the current arrangements (no change)	57 (38%)
Support for changing the current arrangements (change)	95 (62%)
Total responses	152

Assessment of net benefit

The costs associated with the implementation of Option 8.4.2B depend on the existing arrangements relating to educator breaks in services and the application of the new requirements. If services already use additional staff to ensure that minimum ratios are maintained for educator breaks, then no additional costs will be incurred. Conversely, if services are not currently meeting the minimum ratios during educator breaks, the individual costs for each service may be high as additional staff will be necessary to cover the breaks. As the extent to which services are currently meeting the required minimum ratios during educator breaks is not known — the costs to the services of introducing such a requirement cannot be quantified.

The primary benefit of requiring minimum ratios to be met at all times, including educator breaks, is the increased safety and wellbeing of children associated with the baseline standards being met at all times. The responses to the proposed options also indicated that further clarification of the proposed changes is necessary.

Preferred option

The requirements regarding educator breaks will be stated in jurisdiction specific provisions. Current guidance on educator breaks will be removed to avoid confusion and ensure consistency between the legislation requirements and guidance material.

PREFERRED OPTION: Alternative option

The current guidance on educator breaks to be removed and replaced with guidance requiring compliance with the law concerning prescribed ratio requirements and referring services to their regulatory authority in their state or territory for advice on jurisdiction specific provisions and/or guidance.

There will be no changes to the general provisions in the National Law or National Regulations concerning the application of prescribed ratio requirements during educator breaks. Provide jurisdiction specific savings provisions for Tasmania and Western Australia to mirror the existing South Australian provision. Amend the existing Queensland provisions to expand application of the rest period provisions to all current services.

Note that this matter should be re-visited in a future review of the NQA.

8.16 RIS Proposal 8.4.3 — First Aid Qualifications

Options for first aid qualifications

Option	Description
8.4.3A	No change
8.4.3B	Amend regulation 136 to allow a 'staff member' and not just an 'educator' to be the person immediately available who holds the necessary first aid, anaphylaxis and emergency asthma training.

The current regulatory framework requires that holders of first aid, anaphylaxis and emergency asthma management qualifications are to be educators in attendance and immediately available at all times children are being educated and cared for by the service. However, there may be other staff members who could be well placed to offer immediate assistance in an emergency if they have the appropriate training. As such, Option 8.4.3B was introduced as a means of increasing flexibility to providers in allowing appropriately qualified persons (rather than exclusively educators) to attend to children, which would potentially increase the number of persons with appropriate first aid qualifications in services nation-wide.

Consultation findings

*Overall, in consideration of the consultation findings, this proposal for change received a **mixed** level of support.*

The vast majority of submission responses were supportive of the proposed change. However, while the change was generally supported, several submissions advocated that it was important for all staff members to be trained in first aid, anaphylaxis and emergency asthma management procedures. It was noted that it was important this proposed change did not become a loophole through which services reduced their provision of first aid training to educators.

The survey responses to this question were slightly in favour of changing the current arrangements.

Table 50 Survey responses on support for change — First Aid Qualifications

Survey options	Survey
Support for retaining the current arrangements (no change)	67 (44%)
Support for changing the current arrangements (change)	85 (56%)
Total responses	152

Assessment of net benefit

The benefits of the proposal mirror its costs. If services respond by shifting the responsibility from the educator to another staff member, this could potentially produce benefits by allowing the educator to focus on other aspects of program delivery. If the service responds by broadening the responsibility and having multiple staff responsible for first aid, then the benefits will primarily take the form of increased child safety and wellbeing. Ultimately, this change will give providers flexibility to determine how to respond in a way that maximises the net benefits produced.

Preferred option

PREFERRED OPTION: Option 8.4.3B

Amend regulation 136 to allow a ‘staff member’ or ‘nominated supervisor’ and not only an ‘educator’ to be the person immediately available who holds the necessary first aid, anaphylaxis and emergency asthma management training.

8.17 RIS Proposal 8.5.1 — Undertakings — expansion of scope

Options for undertakings — expansion of scope

Option	Description
8.5.1A	No change
8.5.1B	Expand the current scope for undertakings to enable regulatory authorities to consider undertakings in circumstances where a regulatory authority might otherwise issue a prohibition or suspension notice under the National Law.

Under the current National Law, undertakings can be accepted by a regulatory authority from a person who has contravened or alleged to have contravened a provision of the National Law. The person undertakes either to take action or refrain from taking action. Option 8.5.1B was developed to extend the current scope of undertakings to include circumstances where a regulatory authority might otherwise issue a prohibition or suspension notice. This gives more flexibility to the regulatory authority in addressing issues, and is a less severe option than a prohibition or suspension notice.

Consultation findings

*Overall, in consideration of the consultation findings, this proposal for change received a **mixed** level of support.*

The vast majority of submission responses were supportive of the proposed change.

In contrast, the survey responses to this question were slightly in favour of retaining the current arrangements. However, when asked specifically whether they agreed or disagreed with

Option 8.5.1B, the results were more positive. For every one survey response in disagreement with Option 8.5.1B, there were approximately three responses in agreement.

Table 51 Survey responses on support for change — Undertakings — expansion of scope

Survey options	Survey
Support for retaining the current arrangements (no change)	61 (52%)
Support for changing the current arrangements (change)	56 (48%)
Total responses	117

Assessment of net benefit

There are no additional costs anticipated to arise from the introduction of Option 8.5.1B however, the added flexibility afforded to regulatory authorities is expected to result in a net benefit. The benefit is the reduction in administrative costs for providers and services responding to enforceable undertakings instead of prohibition or suspension notices. Higher costs from administrative processes are likely for providers and services when responding to more severe enforcement actions.

Quantification of the net benefit is difficult as there is high variability in the cost of enforcement actions, however it is expected a reduction in prohibition and suspension notices to address contravention or alleged contravention of requirements is likely to result in a net benefit, it is recommended that the scope of undertakings is extended.

Preferred option

Given the anticipated net benefit, and in the absence of any significant objections made through the consultation period, Option 8.5.1B is the preferred option.

PREFERRED OPTION: Option 8.5.1B

Expand the current scope for undertakings to enable regulatory authorities to consider undertakings in circumstances where a regulatory authority might otherwise issue a prohibition or suspension notice under the National Law.

8.18 RIS Proposal 8.5.2 — Undertakings — time within which proceedings for alleged offence must be commenced

Options for undertakings — time within which proceedings for alleged offence must be commenced

Option	Description
8.5.2A	No change
8.5.2B	Amend section 284 to provide that where the contravention of the law that might otherwise have been prosecuted was instead the subject of an undertaking under section 180, and where the relevant Court or Tribunal has determined the person has failed to comply within a term of the undertaking, the proceedings for an offence must be commenced within 6 months of the date of the relevant court or tribunal's determination when the determination was given after 2 years of the date of the alleged offence.

Under the current regulatory framework, when a regulatory authority accepts a written enforceable undertaking this bars legal proceedings for the period for which the undertaking is in force. The length of time for an undertaking may be greater than two years, which is the time limit under which proceedings must be commenced from the date of the alleged offence. As such, Option 8.5.2B was proposed to ensure that regulatory authorities are not barred from prosecuting offences relating to a failure to comply with an undertaking.

Consultation findings

*Overall, in consideration of the consultation findings, this proposal for change received a **mixed** level of support.*

The responses to this option were slightly supportive of the proposed change, noting the survey responses to this question were only slightly in favour of changing the current arrangements. However, when asked specifically whether they agreed or disagreed with Option 8.5.2B, the survey responses were more positive. For every one survey response in disagreement with Option 8.5.2B, there were approximately seven responses in agreement.

Table 52 Survey responses on support for change — Undertakings — time within which proceedings for alleged offence must be commenced

Survey options	Survey
Support for retaining the current arrangements (no change)	56 (48%)
Support for changing the current arrangements (change)	61 (52%)
Total responses	117

Assessment of net benefit

There is no cost associated with the implementation of this proposal, as it is simply closing a loophole that previously may have resulted in regulatory authorities being restricted from prosecuting failed undertakings. Conversely, the benefits anticipated from the introduction of Option 8.5.2B would be improved safety outcomes for children as a result of increased enforceability of regulations and an ability to prosecute in the case of failed undertakings. It is worth noting that in the 2013–14 financial year there were no failed undertakings, so the occasions on which this option is utilised may be minimal.

Preferred option

In recognition of the expected net benefit, Option 8.5.2B is the preferred option.

PREFERRED OPTION: Option 8.5.2B

Amend the National Law to provide that where the contravention of the law that might otherwise have been prosecuted was instead the subject of an undertaking under section 180, and where the relevant court or tribunal has determined the person has failed to comply within a term of the undertaking, the proceedings for an offence must be commenced within 6 months of the date of the relevant court or tribunal's determination when the determination was given after 2 years of the date of the alleged offence.

8.19 RIS Proposal 8.5.3 — Definition of ‘unauthorised person’

Options for drafting issues — definition of ‘unauthorised person’

Option	Description
8.5.3A	No change
8.5.3B	Consider whether redrafting the definition of ‘unauthorised person’ in section 170 by removing the double negative, for example, defining who is an ‘authorised person’, would simplify the current definition and make the scope of section 170 clearer.

Option 8.5.3B was put forward in the interests of simplifying the current definition of ‘unauthorised person’ and making the scope of section 170 clearer. It is anticipated this will enable regulatory authorities to better understand the scope and application of section 170.

Consultation findings

*Overall, in consideration of the consultation findings, this proposal for change received a **high** level of support.*

The majority of submission responses to this option were supportive of the proposed change. Additionally, approximately two-thirds of survey responses to this question were in favour of change.

Table 53 Survey responses on support for change — Drafting issues — definition of ‘unauthorised person’

Survey options	Survey
Support for retaining the current arrangements (no change)	39 (33%)
Support for changing the current arrangements (change)	78 (67%)
Total responses	117

Assessment of net benefit

This proposal is not expected to have a large impact on the sector, with no costs associated with the clarification of the definition. The anticipated benefit is an increased level of clarity for regulatory bodies, and therefore a net benefit to the sector.

Preferred option

Given the expected net benefit, and high level of stakeholder support, Option 8.5.3B is the preferred option.

PREFERRED OPTION: Option 8.5.3B

Redraft the definition of ‘unauthorised person’ in section 170 of the National Law to remove the double negative.

8.20 RIS Proposal 8.5.4 — Extension of liability — definition of ‘person with management and control’

Options for extension of liability — definition of ‘person with management and control’

Option	Description
8.5.4A	No change
8.5.4B	Amend the definition of ‘person with management or control’ (section 5) in the National Law by providing that a person in the relevant position (for example, an officer of the body corporate in subsection (a)) would always be a person with management or control. This will require the deletion of the words ‘who is responsible for managing the delivery of the education and care service’ from subsections (a)–(d). This would ensure the regulatory authority will always be able to prosecute the relevant person even in circumstances where he or she argues they have delegated the responsibility of managing the delivery of the education and care service.

Option 8.5.4B was introduced with the intention of amending the current definition of a ‘person with management or control’ to ensure that the regulatory authorities will always be able to prosecute the relevant person for failing to exercise due diligence to prevent an offence. In the context of an increased corporatisation of the ECEC sector, it has been found the current definition makes it difficult to assign responsibility to the appropriate person.

Consultation findings

*Overall, in consideration of the consultation findings, this proposal for change received a **mixed** level of support.*

The submission responses to this option were supportive of change. In contrast, the survey responses to the proposed options were evenly divided. However, when asked specifically whether they agreed or disagreed with Option 8.5.4B, the survey responses were more positive.

Table 54 **Survey responses on support for change — Extension of liability — definition of ‘person with management and control’**

Survey options	Survey
Support for retaining the current arrangements (no change)	56 (48%)
Support for changing the current arrangements (change)	61 (52%)
Total responses	117

Preferred option

Option 8.5.4B received a moderately high level of support in the consultation period; however on further analysis of the proposed implementation of the option it was identified that this change would have significant consequential impacts on other elements of the National Law, including sections 12, 21, 31, 162 and 173. As such, further policy analysis is required to determine any flow on effects or unintended consequences that may result from the implementation of Option 8.5.4B.

In consideration of this, it is recommended that Option 8.5.4A, for no change, be chosen at the current time and Option 8.5.4B assessed again in a future review of the NQA.

PREFERRED OPTION: Option 8.5.4A

No change. The issue of the definition of ‘person with management or control’ should be considered as part of a future review.

8.21 RIS Proposal 8.6.1 — Compliance and Enforcement Information

Options for compliance and enforcement information

Option	Description
8.6.1A	No change
8.6.1B	Amend sub-regulation 227(3)(b)(iii) of the National Regulations concerning the publication of compliance information to allow the regulatory authority to publish the service approval number for an FDC service.

The National Law currently limits the ability of participating jurisdictions of the National Partnership Agreement to share information in furtherance of the National Law, including that pertaining to the safety, health and wellbeing of children. Option 8.6.1B was developed in order to address a current deficiency in the publication of compliance information across the sector.

Consultation findings

*Overall, in consideration of the consultation findings, this proposal for change received a **high** level of support.*

The vast majority of submission responses to this option were supportive of the proposed change. Similarly, the survey responses to the proposed options were generally in favour of a change to the current arrangements.

Table 55 Survey responses on support for change — Compliance and Enforcement Information

Survey options	Survey
Support for retaining the current arrangements (no change)	23 (26%)
Support for changing the current arrangements (change)	66 (74%)
Total responses	89

Assessment of net benefit

The costs associated with this proposal are expected to be marginal, restricted to a one-off updating of policies and procedures by regulatory authorities. Benefits are expected to be centred on an increased transparency within the sector, and potentially increased compliance within FDC services as a result of the publication of service approval numbers. Given the low expected costs, it is anticipated that any increased transparency or compliance will result in a net benefit to the sector.

Preferred option

In recognition of the expected net benefit and high level of stakeholder support, Option 8.6.1B is the preferred option.

PREFERRED OPTION: Option 8.6.1B with amendment

Amend the National Regulations concerning the publication of compliance information to:

- allow the regulatory authority to publish the service approval number for a FDC service
- include the issuing of an emergency action notice in the list of enforcement actions in regulation 227(2) about which the regulatory authority may publish information under section 270(5) of the National Law.

8.22 RIS Proposal 8.6.2 — Sharing of information within and between other state or territory agencies

Options for sharing of information within and between other state or territory agencies

Option	Description
8.6.2A	No change
8.6.2B	Amend the National Law to clarify that disclosures can be made within departments and to other state or territory government agencies where it is for a purpose related to the funding of education and care services

Similar to the rationale for Option 8.6.1B above, Option 8.6.2B was developed in order to clarify the conditions under which information can be shared within and between other state or territory agencies, when the purpose pertains to the funding of ECEC services. This was in response to perceived limitations of the current National Law which limit the sharing of information between jurisdictions.

Consultation findings

*Overall, in consideration of the consultation findings, this proposal for change received a **high** level of support.*

The vast majority of submission responses to this option were supportive of the proposed change. Similarly, the survey responses to the proposed options were generally in favour of a change to the current arrangements. No survey responses were submitted that strongly disagreed with Option 8.6.2B.

Table 56 Survey responses on support for change — Sharing of information within and between other state or territory agencies

Survey options	Survey
Support for retaining the current arrangements (no change)	20 (22%)
Support for changing the current arrangements (change)	69 (78%)
Total responses	89

Assessment of net benefit

The costs associated with this proposal are expected to be marginal, restricted to a one-off updating of policies and procedures for regulatory authorities. Benefits are expected to be centred on increased transparency and availability of information within the sector, leading to potential increased efficiencies between jurisdictions. These efficiencies would benefit both regulatory authorities, but would also benefit families to the extent that information sharing improves system efficacy. Given the low expected costs, it is anticipated that any increased transparency or available information will result in a net benefit.

Preferred option

In recognition of the expected net benefit and high level of stakeholder support, Option 8.6.2B is the preferred option.

PREFERRED OPTION: Option 8.6.2B

Amend the National Law to clarify that disclosures can be made within departments and to other state or territory government agencies where it is for a purpose related to the funding of education and care services.

8.23 RIS Proposal 8.6.3 — Publication of information

Options for publication of information

Option	Description
8.6.3A	No change
8.6.3B	Amend the National Law to allow information published under section 270 to identify a person with management and control of the service provider in relation to which enforcement action has been taken and to enable a regulatory authority to publish such information if the regulatory authority is satisfied it is in the public interest to do so.

Option 8.6.3B was developed in response to findings that publicity of enforcement actions is a key tool for modifying behaviour. This will increase transparency around enforcement actions, in cases where publicity will further the objective of the National Law.

Consultation findings

*Overall, in consideration of the consultation findings, this proposal for change received a **high** level of support.*

Approximately 90 per cent of submission responses to this option were supportive of the proposed change.

Goodstart Early Learning stated in their submission that they are supportive of Option 8.6.3B on the provision that service providers are advised of what information concerning enforcement actions will be made public prior to release, allowing sufficient time to prepare for communications with families and staff.

Two-thirds of survey responses to the options for change were in favour of a change to the current arrangements, with minimal disagreement to Option 8.6.3B.

Table 57 Survey responses on support for change — Publication of information

Survey options	Survey
Support for retaining the current arrangements (no change)	29 (33%)
Support for changing the current arrangements (change)	60 (67%)
Total responses	89

Assessment of net benefit

The costs associated with this proposal are expected to be marginal, restricted to an updating of policies and procedures for regulatory authorities and potential publication costs. Benefits are expected to result from an increased transparency and availability of information within the sector. In light of the academic research used to develop this proposal, this increased transparency is expected to result in more efficient behaviour by regulatory bodies. Families will also benefit from this proposal for change as the increased availability of information will inform decision making. In response to this, it is expected that changes in sector behaviour in response to increased transparency will result in positive outcomes for children. Given the low expected costs, it is anticipated that any increased transparency or increased efficiency of regulatory bodies will result in a net benefit to the sector.

Preferred option

In recognition of the expected net benefit and high level of stakeholder support, Option 8.6.3B is the preferred option.

PREFERRED OPTION: Option 8.6.3B

Amend the National Law and National Regulations to allow information published under section 270 to identify a person with management and control of the service provider in relation to which enforcement action has been taken and to enable a regulatory authority to publish such information if the regulatory authority is satisfied it is in the public interest to do so.

8.24 RIS Proposal 8.7.1 — Notifying the regulatory authority of a complaint

Options for notifying the regulatory authority of a complaint

Option	Description
8.7.1A	No change
8.7.1B	Amend the National Law so that providers are only required to notify the regulatory authority of a complaint that alleges: <ul style="list-style-type: none"> a serious incident has occurred or is likely to occur at the approved education and care service, or a breach of the National Law or National Regulations.

The current requirement for a provider to notify the regulatory authority of certain complaints may be duplicative as display of information requirements supports parents to raise complaints directly with the regulatory authority. This means that the regulatory authority receives complaints directly

from parents or other involved persons. The policy and procedures for responding to complaints are also specifically covered in the National Regulations and the NQS.

Option 8.7.1B was put forward to clarify the instances in which providers are required to notify the regulatory authority of a complaint in an effort to minimise duplication and reduce unnecessary administrative burden for both providers and regulatory authorities.

Consultation findings

*Overall, in consideration of the consultation findings, this proposal for change received a **high** level of support.*

The majority of submission responses to this option were supportive of the proposed change.

The Edith Cowan Centre for Research in Early Childhood (WA) submitted a notable objection to Option 8.7.1B, stating that in order to ensure children and families are protected, the regulatory authority should be notified of all complaints. They contend that this would work to alleviate the complex decision making processes concerning what might or might not constitute a notifiable complaint.

The majority of survey responses to the proposed options were in favour of a change to the current arrangements, with very minimal disagreement to Option 8.7.1B

Table 58 Survey responses on support for change — Notifying the regulatory authority of a complaint

Survey options	Survey
Support for retaining the current arrangements (no change)	31 (23%)
Support for changing the current arrangements (change)	104 (77%)
Total responses	135

Assessment of net benefit

The costs associated with this proposal are expected to be marginal, restricted to a one-off updating of policies and procedures which providers are already required to review regularly under the NQF framework. Benefits are expected to result from a reduction in administrative burden for both providers and regulatory authorities. Given the low costs, the time savings expected to occur within the sector as a result of the implementation of Option 8.7.1B are expected to result in a net benefit.

Preferred option

In recognition of the expected net benefit and high level of stakeholder support, Option 8.7.1B is the preferred option.

PREFERRED OPTION: Option 8.7.1B

Amend the National Law so that providers are only required to notify the regulatory authority of a complaint that alleges:

- a serious incident has occurred or is occurring at the approved education and care service; or
- the National Law or National Regulations have been contravened.

8.25 RIS Proposal 8.7.2 — Medical conditions policy

Options for medical conditions policy

Option	Description
8.7.2A	No change
8.7.2B	<ul style="list-style-type: none">Amend regulation 90 so that requirements for approved providers in obtaining a medical management plan, and developing a risk minimisation plan and communication plan, are more clearly expressed.Amend regulation 90 to specify that the medical conditions policy applies to children with a diagnosed medical condition.

Under the current framework, approved providers must ensure that there is a medical conditions policy for the service and that this policy sets out practices for managing medical conditions affecting children at the service. The current medical policy requirements may cause confusion as the requirement indirectly creates obligations for providers as part of detailing what must be addressed in the service policy.

As such, Option 8.7.2B was developed in order to clarify the requirements for approved providers to obtain and develop a medical management plan and the associated risk minimisation and communication plans.

Consultation findings

*Overall, in consideration of the consultation findings, this proposal for change received a **high** level of support.*

The vast majority of submission responses to this option were also supportive of the proposed change. Approximately three-quarters of survey responses to the proposed options were also in favour of a change to the current arrangements, with very minimal disagreement to Option 8.7.2B.

Table 59 Survey responses on support for change — Regulations — Medical conditions policy

Survey options	Survey
Support for retaining the current arrangements (no change)	35 (26%)
Support for changing the current arrangements (change)	100 (74%)
Total responses	135

Assessment of net benefit

The costs associated with this proposal are expected to be marginal, restricted to a one-off updating of policies and procedures which providers are already required to review regularly under the NQF framework. Benefits are expected to result from increased clarity within the sector around the specific requirements for providers relating to the medical conditions policy. The reduction in confusion is anticipated to result in time savings for providers through a clearer directive, and potentially improved safety outcome for children resulting from medical conditions policies being delivered at a higher standard.

Preferred option

In recognition of the expected net benefit and high level of stakeholder support, giving effect to Option 8.7.2B in guidance material supporting the National Regulations is the preferred option.

PREFERRED OPTION: Alternative option

No change to the National Regulations. Instead, develop guidance for approved providers on how to comply with their obligations under regulation 90, including noting that a medical management plan is only required to be prepared where a child has a medical condition diagnosed by a registered medical practitioner.

8.26 RIS Proposal 8.7.3 — Evidence of insurance

Options for evidence of insurance

Option	Description
8.7.3A	No change
8.7.3B	Remove the administrative requirement at regulation 180, so that providers are no longer required to keep evidence of insurance at the service premises/principal office, noting the regulatory authority could still require the provider to supply evidence of their insurance, when needed, under its existing monitoring powers.

Option 8.7.3B was developed to alleviate the administrative burden associated with the requirement to keep evidence of insurance at the service premises/principal office. The proposed option was made in response to suggestions that the requirement to hold insurance policies at the service premises did not support quality at the service or support the regulatory authority in fulfilling its functions, and as such, was a redundant requirement.

Consultation findings

*Overall, in consideration of the consultation findings, this proposal for change received a **mixed** level of support.*

The submission responses were generally in favour of the proposed change. However, several submissions that opposed the proposed change stated that it is important for the insurance documentation to be located at the service so that it is easily accessible and available to all stakeholders. The Community Child Care Association suggested that it is crucial for staff to have evidence that the insurance is current, as they have legal duties and responsibilities to the service.

Just over half of the survey responses to the proposed options were in favour of retaining the current arrangements. Slightly more survey responses agreed with Option 8.7.3A than Option 8.7.3B. However, this was still quite split with 17 per cent of responses strongly agreeing with Option 8.7.3B and 16 per cent strongly disagreeing with the option.

Table 60 Survey responses on support for change — Evidence of Insurance

Survey options	Survey
Support for retaining the current arrangements (no change)	76 (56%)
Support for changing the current arrangements (change)	59 (44%)
Total responses	135

Assessment of net benefit

There are no costs associated with this proposal. The removal of the requirement to hold insurance papers on the service premises or in the principal office may result in a reduction in administration burden. This reduced administrative burden will result in time savings to both services and regulatory authority. As the costs associated with the implementation of Option 8.7.3B are expected to be low, the time savings are anticipated to result in a net benefit to the sector.

Preferred option

In recognition of the majority of stakeholders preferring no change, Option 8.7.3A is the preferred option.

PREFERRED OPTION: Option 8.7.3A

No change to the National Law or the National Regulations. Continue to require the approved provider to keep evidence of the required insurance at the service premises/principal office in accordance with regulation 180.

8.27 RIS Proposal 8.8.1 — Qualification requirements for supervisors of volunteers and persons under 18 years — Victoria only

Options for supervisors of volunteers — reading working with children checks

Option	Description
8.8.1A	No change
8.8.1B	To enable more persons under the age of 18 years, who are unable to have a working with children check issued because of their age, work as volunteers at an education and care service, remove the requirement for the supervisors of such people and volunteers to hold or be actively working towards a diploma level qualification from regulation 358(3)(b) concerning working with children check requirements.

In Victoria, before a person is employed as an educator or permitted to volunteer at a service, their working with children check must have been read by the approved provider or a relevant supervisor. There are exceptions to this requirement relating to persons under the age of 18 (who cannot obtain a working with children check because of their age) and volunteers, as long as those persons work only under the direct supervision of an educator.

Currently, the supervising educator of volunteers or persons who are under the age of 18 must hold or be actively working towards a diploma level education and care qualification. Proposal 8.8.1B was put forward in response to concerns in Victoria that at times it is difficult for services to meet this high educational requirement currently imposed on the supervisor of volunteers, thereby restricting the number of volunteers or persons under the age of 18 that can work in a service. This particularly impacts young people who may wish to undertake work experience at an ECEC centre.

Consultation findings

*Overall, in consideration of the consultation findings, this proposal for change received a **mixed** level of support.*

The submission responses were evenly split between supporting and not supporting the proposed change. Option 8.8.1B was noted in several submissions as potentially compromising the health, safety and quality of service provision. CareWest Ltd stated that ‘while it is desirable to encourage young volunteers into services, they should always be supervised by people with appropriate qualifications and experience’. Additionally, KU Children’s Services noted that as a policy it does not allow volunteers or employees under the age of 18 within its services.

The Victorian Government noted that the discussion of the proposed options in submissions reflected a level of misinterpretation on behalf of the respondents. To clarify, this issue relates to the exemption and the requirement under regulation 358(3) that the supervising educator holds or is actively working towards an approved diploma level education and care qualification. A separate amendment is also recommended under 8.29 to ensure that all staff members working in a service (not just educators, FDC educators or volunteers) have their working with children check read.

Just over half of the survey responses to the proposed options were in favour of retaining the current arrangements. However, when asked specifically whether they agreed or disagreed Option 8.8.1B, more survey respondents were in agreement than disagreement with the option.

Table 61 Survey responses on support for change — Qualification requirements for supervisors of volunteers

Survey options	Survey
Support for retaining the current arrangements (no change)	37 (60%)
Support for changing the current arrangements (change)	25 (40%)
Total responses	62

Assessment of net benefit

There is not anticipated to be any associated cost with the implementation of Option 8.8.1B, aside from some initial updating of policies and procedures in Victoria. Alternatively, the primary benefits of amending this regulation will be found in the increased ability of services to host volunteers and workers under the age of 18. This may result in an increased number of young people attracted to the ECEC sector through exposure. While these benefits are not easily quantifiable, given the low expected cost of Option 8.8.1B, it is anticipated that the amending of the regulation will result in an overall net benefit.

Preferred option

Option 8.8.1B received mixed responses in the consultation period, with several submissions suggesting that such an amendment would compromise the health, safety and quality of service provision. However, these comments have been attributed to a misunderstanding about Victoria’s Working with Children Check requirements which do not apply to persons under 18. Option 8.8.1B relates to the qualifications of the educator who directly supervises volunteers or persons who are under the age of 18. Regulations 358(2)(b)(ii) and 358(3)(b) will be revoked. The supervisor of volunteers must have attained the age of 18 and in practice will still be required to be an educator within the meaning of the National Law.

Given this clarification, and the misunderstandings inherent in the majority of negative responses to the proposed options, it is recommended that Option 8.8.1B be implemented with clearer wording.

PREFERRED OPTION: Amended Option 8.8.1B**Victoria specific provision**

The requirement for educators who directly supervise volunteers or persons under the age of 18 years working in a service to also hold or be actively working towards a diploma level qualification be removed from transitional regulations that apply in Victoria. To clarify, the person supervising must still have attained the age of 18 and be an educator within the meaning of the National Law.

8.28 Other matters

A submission from the Office of the State Coroner (QLD) set out the findings of the inquest into the death of Indianna Rose Hicks in 2012. Indianna was five months old when she died suddenly and unexpectedly while in the care of an FDC educator. The State Coroner's Office found that her cause of death fell within the category of Sudden Infant Death Syndrome (SIDS) and made the recommendation that regulation 168 in the National Regulations, 'Education and care service must have policies and procedures' be amended to include a requirement for a policy on 'Sleep and rest for children and infants', including matters set out in regulation 81 (Sleep and rest). The requirement would sit in regulation 168(2)(a) which provides that policies and procedures are required in relation to health and safety.

The findings of the inquest noted that the Department of Education, Training and Employment (QLD) strongly supported such an amendment, noting that the Department submitted that such a recommendation should not be prescriptive in terms of the precise requirements of any Sleep and Rest policy, as to allow approved providers to maintain best practice principles based on contemporary best practice at any given time.

The Hicks family also made a submission in response to the Consultation RIS and advocated for further regulation changes than those recommended by the Office of the State Coroner (QLD). Their requests submitted that the amended regulations should include:

- A recommended time between when sleeping infants under 12 months old are checked, ideally at least every 15 minutes, and that written records of this are mandatory.
- Legislative requirements for providers approved under the National Regulations to have up to date training in relation to safe infant sleeping practices and that this training is conducted with all employees each 12 months at a minimum, to reflect the latest research.
- That any changes made are widely published and a nationwide education program occurs to ensure stakeholders are aware of, and compliant with, such changes.

The Hicks family also asked that any changes be known as 'Indianna's law' to create a lasting legacy of their daughter's death.

In response to these submissions, and in consideration of the safety issues at hand, the current outcomes based approach to regulation in the ECEC sector and enabling flexibility for services to update policies in line with current best practice, it is recommended that the following be implemented.

PREFERRED OPTION: New option

The National Regulations be amended to require approved providers to have in place policies and procedures about sleep and rest for children and infants, similar to regulation 168(2). This would be an additional requirement to the policy and procedures requirements already specified in regulation 168; and

Guidance materials be developed for approved providers, nominated supervisors and all educators on SIDS.

8.29 Other regulatory recommendations

The following is a list of proposed regulation amendments which were not explicitly discussed in the Consultation RIS. These generally relate to points of clarification which have been identified by regulatory authorities as necessary to ensure the appropriate implementation of the NQF. Further information is provided in [Appendix A](#).

Assessment and rating process

- It is proposed the National Law be amended to allow a 60 day extension of time at first tier review where the regulatory authority considers there are special circumstances. Guidance will be developed for regulatory authorities in assisting them to determine when there may be special circumstances.
- It is also proposed that no amendments be made to the National Law to alter the process or decision making of the Ratings Review Panel. This includes that no change is made to the National Law to confer jurisdiction on an external body for external merits review. Instead it is noted there is sufficient administrative power of the Ratings Review Panel (or ACECQA) to recommend; for example, by letter to the regulatory authority, that a regulatory authority reassess and/or re-rate particular elements, quality areas or standards of a particular approved education and care service.

Outside School Hours Care

- Regulation 25 be amended so that in addition to the exceptions from the information requirements already prescribed, a regulatory authority may determine that the information in relation to a soil assessment and/or a planning permit is not required to be provided if the approved provider is seeking to locate the education and care service on a school site. It is intended regulatory authorities continue to have discretion to make this determination.
- Regulation 5 (concerning the exclusion of certain school holiday services) be amended to clarify that the exclusion of services that provide education and care for no more than four weeks per calendar year during school holidays means only those services that provide a total of not more than four weeks' education and care during school holidays, within any one calendar year. To avoid ambiguity, the time period previously expressed as four weeks to be expressed as 28 days.

Family Day Care

- Amend the National Law to expressly provide that in exceptional circumstances and only with the approval of the regulatory authority an FDC service may be provided at a venue as 'in-venue care', with FDC standards to apply to these services.

- Non-compliance with this requirement will result in an offence, with the attached penalty being \$20,000 for individuals and \$100,000 for others.
 - Consequential amendments to other parts of the National Law and National Regulations may be required to give effect to this recommendation, including conditions on service approval, amendment of service approvals, and assessment of FDC venues.
 - Transitional arrangements will be required, as all existing in-venue FDC services will need to apply to their regulatory authority in order to be able to continue to provide these in-venue FDC services.
 - Guidelines on what constitutes a 'suitable' FDC venue for the purpose of regulation 116 concerning the assessment of FDC residences and approved FDC venues, and section 47 of the National Law concerning determination of an application for service approval will be developed. Such guidelines will require consultation between the jurisdictions and should take into account the requirements for remote and rural FDC venues.
 - Guidance will also be required for both regulatory authorities and the sector as to what are 'exceptional circumstances'.
- Section 51(2) of the National Law concerning conditions on service approval will be amended, to require that any FDC service is not able to provide education and care in a new venue until the regulatory authority amends the service approval through condition on the service approval.
 - Amend the regulation concerning the prescribed information to be displayed to provide that:
 - for an FDC office, the name and position of the responsible person in charge of the education and care service is not required to be displayed; and
 - for an FDC residence (and venue), the display of information requirements regarding the occurrence of an infectious disease outbreak or that a child has been diagnosed at risk of anaphylaxis at the education and care service, be limited to the occurrence of these circumstances at the FDC residence the child attends or where the outbreak of the infectious disease occurs; and
 - guidance materials be developed around display of information requirements for FDC services.
 - The National Law will be amended to require an FDC educator to notify the approved provider of prescribed changes in circumstances at the FDC residence/venue and that failure to comply with this notification requirement is an offence provision (penalty \$2,000).
 - The following information to be notified by an FDC educator to the approved provider:
 - a serious incident (defined in the National Regulations);
 - any complaint alleging 'that a serious incident has occurred, or is occurring while a child is being educated or cared for by the approved education and care service or that the National Law or National Regulations have been contravened;
 - any renovations or other changes to the FDC residence or venue which pose a serious risk to the health, safety and wellbeing of children attending, or likely to attend, the FDC residence or venue;
 - any changes in the persons, 18 years or over, residing at the FDC residence (e.g. a new partner of the FDC provider); and
 - any other prescribed information.

- Guidance will be developed to assist FDC educators and approved providers in complying with this obligation.
- Amend the National Law to:
 - create a new offence which penalises the approved provider for:
 - failing to keep at the principal office in accordance with the National Regulations an accurate register of family day care educators (and any other person engaged or registered with the service to provide education and care), (penalty of \$4000 for individual and \$20 000 in any other case);
 - failing to provide the information on the register to the regulatory authority on request within 24 hours (penalty of \$4000 for individual and \$20 000 in any other case).
 - specify that the other persons are educator assistants and coordinators
 - require the approved provider to take reasonable steps to ensure that the information on the register is accurate (penalty of \$2000)
 - make these new offences infringement offences.
- Amend the regulations concerning risk assessments before excursions, to clarify that regular outings do require a risk assessment at least once in a 12 month period.
 - Guidance to assist with the definition of ‘regular outing’ to illustrate the types of regular outings relevant to FDC services, such as ‘going to or from a school to collect children who attend the service’ will be developed.
- Amend the regulations concerning FDC educator assistants to clarify the policy intent of this regulation, which is that FDC educator assistants should only be able to stand in the place of a FDC educator in the event of unforeseen or exceptional circumstances, for example, a genuine on-off, unpredictable and unavoidable appointment.

Supervisor Certificates

- The National Regulations will be amended to extend the expiry date of regulation 238A, from 31 December 2016 to 31 December 2017 – this extension will continue to allow supervisor certificates to be granted to classes of persons, rather than to individual applicants, noting the service is best placed to decide who their certified supervisors should be, without needing a separate approval from the Regulatory Authority. This extension will be void once legislative amendments to remove the supervisor certificate requirements from the National Law and National Regulations are implemented.
- Display of Information — Amend the display of information requirements in the National Law concerning nominated supervisors — as there will no longer be a prescribed class persons to which the nominated supervisor belongs.
- Amend the National Law so that ACECQA is no longer required to maintain a register of certified supervisors.

Compliance , Review, Monitoring and Enforcement

- Amend the National Law to provide that an authorised officer may enter any premises, including a residence, without a search warrant for the purpose of determining whether an education and

care service is operating without a service approval at or from the premises. It is proposed that an authorised officer only be able to exercise this power where the written consent of the occupier of the premises is first obtained, and the authorised officer reasonably believes a person is operating an education and care service without a service approval at or from the premises. This power would be in addition to the power of authorised officers to enter premises with a search warrant under section 201 of the National Law.

- Relevant jurisdictions to amend their application Act or corresponding laws to enable a Justice of the Peace, or any other relevant court or tribunal (in addition to a magistrate), to issue a search warrant, wherever a search warrant may be issued under the National Law, noting this amendment would only apply in jurisdictions that currently empowered a Justice of the Peace, or any other relevant court or tribunal (in addition to a magistrate), to issue search warrants.
- The National Regulations will be amended to allow regulatory authorities to determine that any of the information set out in regulations 24 and 25 referring to applications for service approvals – centre-based services may not be required to be provided in exceptional circumstances.
- Guidance for providers will be developed on their obligations when subcontracting arrangements are entered into for the day to day management of approved services, namely that their legal obligations under the National Law and National Regulations remain unchanged, and that the service provider remains liable for their statutory obligations.
- Amend the National Law to allow regulatory authorities the power to impose conditions on the grant of a service waiver or temporary waiver. The regulatory authorities should also include the ability to remove or change the conditions of a waiver at any time and reissue the service approval.
- Amend the National Law to provide that, where further information is requested by a regulatory authority in response to an application for service waiver or temporary waiver, the time period for responding to the regulatory authority request is excluded from the 60 day limit within which the regulatory authority must decide the application.

Workforce Issues

- Amend regulation 135(2) to clarify that subregulation (1) does not apply in the case of a period of absence of 60 days within any 12 month period, with the 12 month period calculated as being the 12 months preceding the date of application. Further clarify provision so that:
 - The time period previously expressed as 12 weeks is expressed as 60 days
 - The 60 days is a combined total of periods of absence
 - The provision applies in the case of any absence, not just ‘leave’.

Notifications

- Amend section 62 of the National Law to specify that the 28 day timeframe referred to in section 62(3) does not apply in cases where a notification of service transfer is not lodged within the timeframe specified in section 59 of the Law; for example, where a notification of service transfer is lodged less than 42 days before the service transfer is intended to take effect.

Governance

- Section 271 of the National Law concerning disclosure of information to authorities will be amended to alter the grounds for information sharing.
 - Section 271 of the National Law will make explicit that the National Authority and Regulatory Authorities may share information with each other (including regulatory authorities in participating jurisdictions), a relevant Commonwealth government department, any state or territory government department, any Commonwealth, state or territory public authority, or a state or territory local authority.
 - Subsection 271(3) of the National Law will be expanded for the purposes for which disclosures of information may be made by the disclosing entity, such that the disclosure is:
 - reasonably necessary to promote the objectives of the National Quality Framework;
 - for the purposes of enabling or assisting the other relevant entity to perform or exercise any of its functions or powers under the National Law;
 - for the purposes of research or the development of national, state or territory policy with respect to education and care services;
 - for a purpose relating to the funding of education and care services;
 - for a purpose relating to the payment of benefits or allowances to persons using education and care services, provided the disclosure is not otherwise prohibited by law.
 - Subsection 271(7) of the National Law will be amended to enable information to be provided that could identify or lead to the identification of an individual where it furthers the objectives of the National Law (excluding where the purpose is for research or development of policy). This may include information which could identify, or lead to the identification of, an approved provider, nominated supervisor, a suspended FDC educator, or a person who has been subject to enforcement action (which will be specified in the National Law).
 - Develop guidance materials around the use of NQA Information Technology System (NQA ITS) data and the sharing of certain contact details.
- Amend the National Law to allow the National Authority to disclose to approved providers, upon request, information regarding persons subject to prohibition notices and suspended FDC educators and any persons with conditions or prohibitions in regard to being a nominated supervisor. This amendment should be worded to ensure that only relevant information is disclosed to providers with a genuine need to know.
- Amend the National Law to make it an offence for a person to make a false declaration in regard to a prohibition notice (penalty \$6,000). This will enable the approved provider to discharge their obligation under section 188 of the National Law, which makes it an offence for an approved provider to engage a person to whom a prohibition notice applies. Guidance materials will need to be developed for approved providers to ask potential employees during the recruitment process whether they are the subject of a prohibition.
- The National Regulations be amended to allow the Ministerial Council to appoint an Acting Ombudsman, which would be consistent with the mechanism to appoint an Acting Freedom of Information (FOI) Commissioner and Privacy Commissioner.
- Amend the National Regulations to remove redundant provisions relating to FOI applications and ensure consistent operation with the Commonwealth Freedom of Information Act 1982.

Administrative requirements

- Clarify the National Law and National Regulations to require an approved provider to only notify the regulatory authority of a serious illness (as well as for serious injury or trauma) for which the child attended, or should have attended, a hospital. This would mean that services would not notify the regulatory authority of instances where a child only saw a general practitioner and was not hospitalised.
- Amend the definition of 'serious incident' for notification purposes in regulation 12 in relation to the attendance of emergency services, to specify that notification only needs to be given to regulatory authorities where emergency services attended a location at which an education and care service is being provided, as a result of an emergency, and not, for example, as a result of any precautionary measures. Clarify the definition of 'emergency' in regulation 4 to mean an incident, situation or event where there is an imminent or severe risk to the health, safety or wellbeing of a person or persons at a place where education and care services are being provided, and provide examples.
- Amend the National Regulations so that the prescribed matters required to be notified to the regulatory authority specifically include:
 - any incident where the approved provider reasonably believes that physical and/or sexual abuse of a child has occurred, or is occurring, while a child is being educated and cared for at an education and care service; or
 - an allegation that sexual abuse or physical abuse of a child has occurred, or is occurring while a child is being educated or cared for at an education and care service.
- Guidance materials to be developed and training to be conducted for approved providers and regulators on reporting requirements.

Transitional and savings

- Amend Part 7.6 of the National Regulations savings provisions specific for South Australia relating to physical environment requirements for declared approved centre-based services so that the saving provisions cease to apply if the service premises is renovated in a manner that results in a reduction of the existing unencumbered indoor or outdoor space suitable for children's use, or the service premises is renovated and the provider requests an amendment to the maximum number of children to be educated and cared for at the service, or the service approval is transferred to another approved provider. The regulatory authority may also exempt an approved provider where a renovation results in a reduction to the existing unencumbered outdoor space suitable for children's use if the remaining unencumbered outdoor space is not less than 7 square metres per child.
- To ensure that the Working with Children Check requirements apply to all staff working in or as part of an ECEC service in Victoria, it is recommended that regulation 358 concerning Working with Children Check requirements be amended to apply to all staff members of an ECEC service.

Regulations revoked

- It is recommended that in amending the National Regulations, all transitional regulations with a defined duration that expire on or before 31 December 2015 be revoked. More detailed consideration will be undertaken during finalisation of the amendment regulations.

9. Implementation and evaluation plan

9.1 Implementation

The proposed date for the introduction of the majority of changes is 1 October 2017 (excluding Western Australia which will implement these changes by 1 October 2018). The introduction of the revised NQS and associated changes are proposed to begin 1 February 2018 (including Western Australia).

As the NQF operates under an applied law system, Victoria (the host jurisdiction) must pass the amendments to the National Law and following this process, the law will either apply automatically or need to be adopted in other states and territories. In South Australia, amendment of the *Education and Care Services National Law* which is set out in Schedule 1 of the *Education and Early Childhood Services (Registration and Standards) Act 2011* will enact the changes. Western Australia, needs to amend its own corresponding legislation. This may require some changes to be implemented later in jurisdictions.

Amendments to the National Regulations are made by the Ministerial Council, tabled in the Parliament of each jurisdiction, and published on a website hosted by New South Wales. Western Australia will need to amend its own corresponding regulations.

Some changes are likely to involve a transition period for the sector and will involve a phased implementation. Where known, the intended transition timeframes have been included in the discussion of each option.

9.2 Evaluation

To ensure that regulation remains relevant and effective over time, there will be ongoing monitoring and review of the implemented changes by all governments and ACECQA, as part of its national oversight role in guiding the implementation and administration of the NQF and monitoring and promoting consistency in the outcomes of its implementation and administration.

ACECQA publishes an annual report which is publicly available, as well as NQF Snapshots that are also publicly available. ACECQA also regularly reports to the COAG Education Council on the implementation and administration of the NQF.

Appendix A Summary of proposals and preferred options

This appendix provides a summary of the proposals and preferred options for changes to the NQF. The proposals are numbered, to enable cross-referencing throughout the RIS. Proposed guidance and clarifications to the National Law and National Regulations are also included.

1. Refining the National Quality Standard and assessment and rating process

The table below outlines the proposals and preferred options for refining the NQS and assessment and rating process.

Table 62 Refining the National Quality Standard and the assessment and rating process

No.	Proposal	Preferred option
1.1	Reducing the complexity of the NQS	Implement a revised NQS. Amend the National Regulations to note that section 133 of the National Law requires assessment of services in accordance with the National Regulations to determine whether a service meets the NQS and the requirements of the National Regulations, with an example that for element 4.1.1, all educator to child ratios and qualification requirements must be maintained at all times for the service to meet this element.
1.2	Streamlining of quality assessments	<p>The assessment and rating process consists of:</p> <ul style="list-style-type: none"> • Stage 1 <ul style="list-style-type: none"> – Pre-visit review of the service's Quality Improvement Plan – Desktop assessment of provider and service • Stage 2 <ul style="list-style-type: none"> – Assessment of practice at service by observation, discussion with staff and sighting of documentation – Clarification of inconsistencies and minor adjustments • Stage 3 <ul style="list-style-type: none"> – Post visit review of evidence against requirements of NQS – Consideration of feedback – Determination of rating.
1.3	Reduction in documentation of assessments or evaluations of school age children	<p>For all jurisdictions, other than NT, Qld and NSW, there is no change to the National Law or regulation 74. Instead develop clear guidance to OSHC (and other services providing care to children over preschool age) and authorised officers on what is appropriate documentation proportionate to a child's pattern of attendance, including examples of the type of documentation be kept.</p> <p>For NT, Qld and NSW, jurisdiction specific regulations are inserted in Chapter 7 of the National Regulations to provide that for programs for children over preschool age, services will be taken to meet the program documentation requirements for regulation 74, if documentation provides evidence about the development of the program.</p> <p>Develop jurisdiction specific guidance materials for both service providers and authorised officers on what is required for a service provider in NT, Qld, and NSW to meet these program documentation requirements.</p>

No.	Proposal	Preferred option
1.4	Significant Improvement Required rating	Retain the Significant Improvement Required rating but amend the definition so that the grounds refer to 'significant risk' to children, rather than 'unacceptable risk'. No change to the powers to suspend a rating assessment at section 137.
1.5	Exceeding the NQS rating	To be rated Exceeding the NQS at the Quality Area level, all standards in the Quality Area need to be rated Exceeding the NQS. <i>This option will be implemented in conjunction with the revised NQS.</i>
1.6	Excellent rating	Retain the Excellent rating, remove fee and limit applications to services rated Exceeding NQS in all quality areas. <i>This option will be implemented in conjunction with the revised NQS.</i>
1.7	Ensuring ratings accurately reflect service quality	There will be no change to the overall rating and no change to the current requirement that all elements must be met to achieve an overall rating of Meeting NQS. In addition, the application of the Minor Adjustments Policy will be broadened, but not extending to those areas of the NQS that are not able to be remedied quickly. <i>Regulatory authorities and ACECQA will undertake further work to ensure the policy is applied consistently across jurisdictions.</i>
1.8	Length of time until services are re-assessed	No change. Expectations of the frequency of assessment and rating of services against the National Quality Standard remain consistent with the terms of the National Partnership.

Proposed guidance/clarification of the National Law and National Regulations — Refining the assessment and rating process

Outcome of review by regulatory authority

It is proposed the National Law be amended to allow a 60 day extension of time at first tier review where the regulatory authority considers there are special circumstances. Guidance will need to be developed for regulatory authorities in assisting them to determine when there may be special circumstances.

Rationale: A regulatory authority currently has 30 days to conduct a review, plus a 30 day extension for collecting further information. This means a review must be conducted in no more than 60 days which can prove challenging if a regulatory authority decides to undertake a reassessment and re-rating of a service with special circumstances. An extension of 60 days (a total of 90 days for review) would allow the regulatory authority to effectively exercise its powers before making a final decision to confirm or amend the rating.

Decision on review by Ratings Review Panel

That no amendments be made to the National Law to alter the process or decision making of the Ratings Review Panel. This includes that no change is made to the National Law to confer jurisdiction on an external body for external merits review. Instead it is noted there is sufficient administrative power of the Ratings Review Panel (or ACECQA) to recommend; for example, by letter to the regulatory authority, that a regulatory authority reassess and/or re-rate particular elements, quality areas or standards of a particular approved education and care service.

2. Removing supervisor certificate requirements

The table below outlines the preferred options for removing supervisor certificate requirements.

Table 63 Removing supervisor certificate requirements

No.	Proposal	Preferred option
2.1	Supervisor certificate requirements	Remove the supervisor certificate requirements from the National Law and National Regulations, to allow decisions regarding the responsible person to be made at the service level.

3. Expanding the scope of the NQF

The table below outlines the preferred options for expanding the scope of the NQF.

Table 64 Expanding the scope of the NQF

No.	Proposal	Preferred option
3.1	Additional services to be included in NQF	Retain the existing scope of services under the NQF. Further work would be required before a decision could be made to bring out of scope services under the NQF.
3.2	Application of assessment and rating processes to additional services	No change. Additional services are not being included in NQF.

4. Extending some liability to educators

The table below outlines the preferred option for extending some liability to educators.

Table 65 Extending some liability to educators

No.	Proposal	Preferred option
4.1	Extension of some liability to educators	No change to the National Law or National Regulations. Liability under sections 165 and 167 to remain with the approved provider, nominated supervisor and family day care educator.

5. Changes to prescribed fees

The table below outlines the preferred options for changes to prescribed fees.

Table 66 Changes to prescribed fees

No.	Proposal	Preferred option
5.1	Introduce fee for extension of temporary waiver	Amend the National Law to introduce a prescribed fee for an application to extend a temporary waiver. The fee will be the same value as the fee for an initial waiver application.
5.2	Increase in provider approval fee	No change.
5.3	Increase in service approval fee	No change.
5.4	Increase in annual fees for approved services	No change.

6. National educator to child ratio for OSHC services

The table below outlines the preferred options for introducing a national educator to child ratio for OSHC services.

Table 67 Introducing a national educator to child ratio for OSHC services

No.	Proposal	Preferred option
6.1	National educator to child ratio	<p>Prescribe a national educator to child ratio of 1:15 for all services providing education and care services to children over preschool age.</p> <p>WA and ACT will require savings provisions to preserve their existing higher educator to child ratios for children over preschool age.</p> <p>NSW will require a 12 month transitional period to allow the sector time for the introduction of the new requirement.</p>

Proposed guidance/clarification of the National Law and National Regulations — Other operational issues relevant to OSHC services

Reduction in prescribed information in applications for OSHC service applications

Regulation 25 will be amended so that in addition to the exceptions from the information requirements already prescribed, a regulatory authority may determine that the information in relation to soil assessment and/or planning permit is not required to be provided if the approved provider is seeking to locate the education and care service on a school site. It is intended regulatory authorities continue to have discretion to make this determination.

Rationale: A soil assessment (regulation 25(1)(d)) and a planning permit (regulation 25(1)(e)) are required to be provided to the regulatory authority, even where other requirements are waived because the approved provider is seeking to locate on a school site.

As the soil assessment and planning permit requirements may have already been assessed under building and development of the school site, there is scope to consider broadening regulation 25(2) to reduce regulatory burden for the OSHC sector and other services seeking to be located on a school site.

Definition of a 4 week or less vacation care service

That regulation 5 (concerning the exclusion of certain school holiday services) be amended to clarify that the exclusion of services that provide education and care for no more than four weeks per calendar year during school holidays means only those services that provide a total of not more than four weeks' education and care during school holidays within any one calendar year. To avoid ambiguity, the time period previously expressed as four weeks should be expressed as 28 days.

Rationale: As currently worded, there is a lack of clarity for regulatory authorities on whether the service must provide education and care for more than four weeks consecutively to be included under the NQF or whether a service can operate for more than four weeks non-consecutively over the calendar year to be in-scope.

7. Improved oversight of and support within FDC services

The table below outlines the preferred options for improved oversight of and support within FDC services.

Table 68 Improved oversight of and support within FDC services

No.	Proposal	Preferred option
7.1	<i>Approval of FDC services across jurisdictions</i>	<p>Approved FDC providers be required to hold a service approval in each jurisdiction where the FDC educators operate (including paying all relevant fees in each jurisdiction in which they operate an FDC service).</p> <p>Further, it is recommended that:</p> <ul style="list-style-type: none"> • A FDC principal office would be required to be nominated with each service approval and would also be recorded on the service approval, as currently required under the National Law. • There would be special arrangements permitting an approved provider to have one principal office for both FDC service approvals where the proposed FDC services are in Local Government Areas in adjacent jurisdictions (e.g. Albury/Wodonga). This would be in the form of a waiver or a temporary waiver from the requirement for an approved provider to have a principal office in each jurisdiction in which they have a service, and would also be a condition on the service approval. • Guidance materials will need to be developed for regulatory authorities to ensure consistency in applying these new arrangements.
7.2	Limiting the number of FDC educators in a service	<p>Amend the National Law and National Regulations so that a regulatory authority may impose a maximum number of educators approved to be engaged or registered by a FDC service and include this on the service approval as a condition of the service approval.</p> <ul style="list-style-type: none"> • Noting that the National Law currently enables regulatory authorities to amend the service approval including the imposition of any conditions on the service approval that would be associated with limiting the maximum number of educators. • To help ensure consistency, develop guidelines to assist regulatory authorities when exercising this discretion, including examples of when the discretion may be exercised (such as where there is a new service whose ability to run a service is untested, or where the service has a history of compliance issues), and when such conditions should be reviewed (every 12 months of operation). To ensure transparency this guidance should also be available to FDC providers.
7.3	<i>Mandating a ratio of FDC co-ordinators to educators</i>	<p>The National Law and National Regulations be amended to:</p> <ul style="list-style-type: none"> • Require approved providers of a FDC service to have a prescribed minimum full time equivalent (FTE) FDC co-ordinator to every 15 educators (ratio of 1:15) for the first 12 months of operation, with immediate effect for any new FDC services • Require approved providers of a FDC service, after 12 months of operation, to have a prescribed minimum of 1 FTE FDC co-ordinator to every 25 educators (ratio of 1:25) • Provide that a breach of these new requirements would be an offence with penalty (\$5,000 for individuals and \$25,000 for

No.	Proposal	Preferred option
		<p>others, as in existing section 163 of the National Law).</p> <ul style="list-style-type: none"> It is further recommended that the National Law and the National Regulations be amended to provide a regulatory authority with the discretion to impose a ratio of 1:15 (after the first 12 months of operation), or to waive the ratio requirement provide a transitional period to allow approved FDC services that are not currently subject to a FDC co-ordinator ratio a period of 12 months to meet these new requirements provide an exception for approved FDC services that are currently subject to conditions imposing different minimum FDC co-ordinator numbers. guidance materials will be developed to ensure national consistency and to help regulatory authorities and approved providers understand and give effect to their obligations under this recommendation.
7.4	Mandating a minimum Certificate III for FDC educators	<ul style="list-style-type: none"> That there be no change to the National Law or National Regulations regarding the mandating of Certificate III qualifications for FDC educators.
7.5	FDC educator assistants' activities	<p>Amend the National Regulations concerning FDC educator assistants to better clarify the policy intent of this regulation, which is that FDC educator assistants should only be able to stand in the place of a FDC educator in the event of unforeseen or exceptional circumstances; for example, 'a genuine one-off unpredicted and unavoidable appointment'.</p> <p>Create an offence (with attached penalty) that an approved provider must ensure the FDC educator assistant's activities are limited to the circumstances specified in the National Regulations (penalty to be set at \$10,000 for individuals and \$50,000 for others).</p> <p>Create a new offence (with attached penalty of \$2,000) that a FDC educator must ensure that the FDC educator assistant's activities are limited to the circumstances specified in the National Regulations.</p> <p>It is further recommended that guidance is developed to further clarify appropriate use of FDC assistants.</p>
7.6	Principal office notifications	<p>Amend the National Law and National Regulations so that:</p> <ul style="list-style-type: none"> a FDC approved provider must notify the regulatory authority of a change in location of the principal office of the FDC service at least 14 days before the change. The FDC approved provider must provide proof of address for the new principal office (e.g. contract or rental agreement). a FDC provider to include in their application for a service approval proof of address for the principal office (this would require amendment to regulation 26(f)).
7.7	Powers of entry to FDC residences	<p>Amend section 199 of the National Law to allow authorised officers to enter a residence where, at the time of entry:</p> <ul style="list-style-type: none"> the authorised officer reasonably believes that a service is operating; or the FDC register indicates the service should be operating at the residence at the time of entry (this would provide an additional basis for entry); and

No.	Proposal	Preferred option
		<ul style="list-style-type: none"> a 'reasonable belief' might include hearing or seeing signs of a number of children.

Proposed guidance/clarification of the National Law and National Regulations — FDC services

FDC venues, principal offices and display of information

Amend the National Law to expressly provide that in exceptional circumstances, and only with the approval of the regulatory authority, a FDC service may be provided at a venue as 'in-venue care', with FDC standards to apply to these services.

- Non-compliance with this requirement will result in an offence, with the attached penalty being \$20,000 for individuals and \$100,000 for others.
- Consequential amendments to other parts of the National Law and National Regulations may be required to give effect to this recommendation, including conditions on service approval, amendment of service approvals, and assessment of FDC venues.
- Transitional arrangements will be required, as all existing in-venue FDC services will need to apply to their regulatory authority in order to be able to continue to provide these in-venue FDC services.
- Guidelines on what constitutes a 'suitable' FDC venue for the purpose of regulation 116 concerning the assessment of FDC residences and approved FDC venues, and section 47 of the National Law concerning determination of an application for service approval will be developed. Such guidelines will require consultation between the jurisdictions and should take into account the requirements for remote and rural FDC venues.
- Guidance will also be required for both regulatory authorities and the sector as to what are 'exceptional circumstances'.

Rationale: It is unclear as to whether it is the regulatory authority or the approved provider that is responsible for approving FDC venues. Some regulatory authorities are concerned that providers of an approved FDC service may use provisions relating to FDC venues to avoid requirements applying to centre-based services. There is also concern that some FDC venues (assessed by the approved provider) are being used to educate and care for children that are not appropriate venues and may pose risks to children.

Display of information at FDC offices

Guidance will be developed around display of information requirements for FDC services. This proposal would require legislative amendment to provide exemptions for FDC offices so that they are not unreasonably burdened by requirements of displaying certain irrelevant information.

Rationale: Sub-regulation 173(2)(c) states that the position of the responsible person in charge of the education and care service at any given time is not required to be displayed in FDC residences and FDC venues. FDC offices are not included in this exception. It should be noted that an FDC office that also functions as a residence or venue should be regarded under this provision as an FDC residence or venue.

FDC educator assistants

Amend the National Regulations and provide guidance material concerning FDC educator assistants to better clarify the policy intent of this regulation, which is that FDC educator assistants should only be able to stand in the place of a FDC educator in the event of unforeseen or exceptional circumstances, for example 'a genuine one-off unpredicted and unavoidable appointment'.

Rationale: Regulation 144 provides for circumstances, in which an approved FDC educator assistant may, with the written consent of a parent of each child, assist the FDC educator, including attending an appointment (other than a regular appointment).

The meaning of the term 'regular appointment' is unclear and is currently being construed by some service providers as allowing educators to leave children with an assistant while they undertake routine or general personal tasks: for example, tasks that do not meet the policy intent of the regulation that educator assistants would be utilised for one-off appointments, such as a specialist medical appointment. This potentially leaves the children in the care of someone who does not have any early childhood training or

qualifications for more time than is necessary, impacting on the quality of the education and care.

Provision of information to the approved provider

The National Law be amended to require an FDC educator to notify the approved provider of prescribed changes in circumstances at the FDC residence/venue and that failure to comply with this notification requirement is an offence provision (penalty \$2,000).

The following information to be notified by an FDC educator to the approved provider:

- A serious incident (defined in the national regulation);
- Any complaint alleging 'that a serious incident has occurred, or is occurring' while a child is being educated or cared for by the approved education and care service, or the National Law and National Regulations has been contravened;
- Any renovations or other changes to the FDC residence or venue which pose a serious risk to the health, safety and wellbeing of children attending, or likely to attend, the FDC residence or venue;
- Any changes in the persons, 18 years or over, residing at the FDC residence (e.g. a new partner of the FDC provider); and
- Any other prescribed information.

Guidance will be developed to assist FDC educators and approved providers in complying with this obligation.

Rationale: Some regulatory authorities have encountered instances where FDC educators have not notified their approved provider of changes in the home which may pose a risk to children's health, safety and wellbeing, such as a new person 18 years or over residing at the residence without a working with children check having first been undertaken.

Risk assessments for excursions

Amend the National Regulations concerning risk assessments before excursions, clarify that regular outings do require a risk assessment at least once in a 12 month period. Guidance to assist with the definition of 'regular outing' to illustrate the types of regular outings relevant to FDC services, such as 'going to or from a school to collect children who attend the service' will be developed.

Rationale: There is some confusion in the sector as to whether the routine outings (such as drop offs and pick-ups of children from other services including schools and preschools; visits to the park or library etc.) require a risk assessment under regulations 99–102.

8. Other changes which will have a regulatory impact

The table below describes the preferred options for all other changes which are expected to have a regulatory impact.

Table 69 Other changes which will have a regulatory impact

Approvals

No.	Proposal	Preferred option
8.1.1	Approvals — assessment of capability — applicants	That the National Law be amended to specify that an applicant's capability to operate an education and care service in accordance with the National Law may be taken into consideration in assessing fitness and propriety when determining applications for provider approval.
8.1.2	Approvals — assessment of capability — further information	Note that Section 14 of the National Law is currently sufficient to allow regulatory authorities to seek further information with respect to an applicant's capability to operate an education and care service in accordance with the National Law when assessing applications for provider approval.
8.1.3	Approvals — assessment of capability — reassessment	Note that Section 21 of the National Law is currently sufficient to encompass the reassessment of an approved provider's capability to operate an education and care service in accordance with the National Law.
8.1.4	Approvals — maximum children numbers as service approval condition	That the National Law be amended to specify that the maximum number of children specified on a service approval forms part of the conditions of the service approval. It is not a breach of the condition regarding the maximum number of children where a child, or two more children from the same family, are being cared for by the service in an emergency (similar to the current regulation 123 regarding educator to child ratios) and the approved provider is satisfied on reasonable grounds that this will not affect the health, safety and wellbeing of other children at the service.

Waivers

No.	Proposal	Preferred option
8.2.1	Revocation of waivers	Amend the regulation concerning the prescribed period in relation to a revocation of a service waiver to provide for the revocation of a service waiver to take effect 14 days after notifying the approved provider, or another period by agreement.

Supervisors

No.	Proposal	Preferred option
8.3.1	Selecting a nominated supervisor/ person in day-to-day charge	<ul style="list-style-type: none"> Amend the National Law and National Regulations to provide that the approved provider is responsible for appointing an individual person aged 18 years or older, who is 'fit and proper and has suitable skills', as the nominated supervisor/PIDTDC noting: <ul style="list-style-type: none"> an approved provider does not have to appoint a PIDTDC if a nominated supervisor or approved provider is to be the responsible person for the purpose of Section 162 of the National Law; and a nominated supervisor may also appoint a PIDTDC. To signal to approved providers the importance of making considered decisions in appointing the nominated supervisor/PIDTDC, amend the National Law and National Regulations to provide that the service must have a nominated supervisor who is 'fit and proper, and has suitable

No.	Proposal	Preferred option
		<p>skills', to supervise the service.</p> <ul style="list-style-type: none"> In support of the approved provider's role in appointing a nominated supervisor/PIDTDC, publish guidelines to assist providers in determining 'fitness and propriety' and what are the 'suitable skills' for a nominated supervisor/PIDTDC including compliance with working with children laws. The guidance would also emphasise the importance of making sure approved providers are aware of any changes affecting the 'fitness and propriety' of a nominated supervisor/PIDTDC. Guidance would also be required to assist nominated supervisors in appointing a PIDTDC.
8.3.2	Powers of the regulatory authority	<ul style="list-style-type: none"> Amend the prohibition notice provisions in the National Law to give the regulatory authority the power to restrict a person from being the nominated supervisor either entirely or subject to such conditions as the regulatory authority considers appropriate; for example, that it is inappropriate for a specified person to be appointed as a nominated supervisor of a service. Note that Section 192 of the National Law will apply to a regulatory authority's decision to restrict a person from being the nominated supervisor. Note that Section 272 of the National Law will apply to enable the National Authority and a regulatory authority to disclose to approved providers information about whether a person is subject to a prohibition notice.
8.3.3	Supervisors – Limit the number of nominated supervisors	<ul style="list-style-type: none"> Amend the National Law to allow more than one (with a minimum of at least one) nominated supervisor to be appointed at the same time for each service.
8.3.4	Consenting to the role	<ul style="list-style-type: none"> Amend the National Law to remove the requirement for written consent if the approved provider, as an individual applicant, is to also fulfil the role of nominated supervisor. <p><i>It is also noted that in all other circumstances written consent is to be required where a person is to be appointed as the nominated supervisor.</i></p>
8.3.5	Notifications	<ul style="list-style-type: none"> Amend the National Law to: <ul style="list-style-type: none"> (a) make the approved provider responsible for notifying the regulatory authority there is a new nominated supervisor or if there is a change in a nominated supervisor's name or contact details; and (b) remove the existing notification requirements to regulatory authorities regarding fitness and propriety of certified supervisors.
8.3.6	Record keeping	<ul style="list-style-type: none"> No change.
8.3.7	Terminology	<ul style="list-style-type: none"> Amend the National Law and National Regulations to remove references to supervisor certificates and certified supervisors, including all of Part 4 of the National Law concerning supervisor certificates.
8.3.8	Child protection and Nominated Supervisors	<ul style="list-style-type: none"> Amend the National Law and National Regulations to require that nominated supervisors and PIDTDC of an education and care service must have undertaken child protection training as is required by the relevant state and territory in which the nominated supervisor and PIDTDC is working. (This may be a requirement under law or under a non-statutory requirement such as a state government memorandum of understanding). Breach of this requirement is not an offence under the National Law.

Operational issues

No.	Proposal	Preferred option
8.4.1	12 Weeks ECT Leave Provision — Extending the scope to include resignation	<p>Amend the National Regulations to introduce jurisdiction specific transitional regulations for WA, ACT Qld and Tas, enabling approved providers in those jurisdictions to use regulation 135 in the event of the resignation of an ECT, with the transitional provisions expiring on 31 December 2021 unless extended.</p> <p>This arrangement is to be reviewed again in a future review of the NQA.</p> <p>Clarify the time period of 12 weeks in the existing provision so that it is expressed as 60 days, with the 60 days being a combined total of periods of absence and that this will apply in the case of any absence, not just 'leave'.</p>
8.4.2	Educator Breaks	<p>That the current guidance on educator breaks be removed and replaced with guidance requiring compliance with the law concerning prescribed ratio requirements and referring services to their regulatory authority in their State or Territory for advice on jurisdiction specific provisions and/or guidance</p> <p>AND</p> <p>There will be no other changes to the general provisions in the National Law or National Regulations concerning the application of prescribed ratio requirements during educator breaks. Provide jurisdiction specific savings provisions for Tasmania and Western Australia to mirror the existing South Australian provision. Amend the existing Queensland provisions to expand application of rest period provisions to all current services.</p> <p>Note that this matter should be re visited in a future review.</p>
8.4.3	First Aid Qualifications	Amend regulation 136 to allow a 'staff member' or 'nominated supervisor' and not only an 'educator' to be the person immediately available who holds the necessary first aid, anaphylaxis and emergency asthma management training.

Compliance, review, monitoring and enforcement

No.	Proposal	Preferred option
8.5.1	Undertakings — expansion of scope	Expand the current scope for undertakings to enable regulatory authorities to consider undertakings in circumstances where a regulatory authority might otherwise issue a prohibition or suspension notice under the National Law.
8.5.2	Undertakings — time within which proceedings for alleged offence must be commenced	Amend the National Law to provide that where the contravention of the law that might otherwise have been prosecuted was instead the subject of an undertaking under Section 180, and where the relevant court or tribunal has determined the person has failed to comply within a term of the undertaking, the proceedings for an offence must be commenced within 6 months of the date of the relevant court or tribunal's determination when the determination was given after 2 years of the date of the alleged offence.
8.5.3	Drafting issues — definition of 'unauthorised person'	Redraft the definition of 'unauthorised person' in Section 170 of the National Law to remove the double negative.
8.5.4	Extension of liability — definition of 'person with management and control'	The issue of the definition of 'person with management or control' is considered as part of a future review.

Information Sharing

No.	Proposal	Preferred option
8.6.1	Compliance and Enforcement Information	Amend the National Regulations concerning the publication of compliance information to: <ul style="list-style-type: none"> allow the regulatory authority to publish the service approval number for a FDC service include the issuing of an emergency action notice in the list of enforcement actions in regulation 227(2) about which the regulatory authority may publish information under section 270(5) of the National Law.
8.6.2	Sharing of Information within and between other state or territory government agencies	Amend the National Law to clarify that disclosures can be made within departments and to other state or territory government agencies where it is for a purpose related to the funding of education and care services.
8.6.3	Publication of Information	Amend the National Law and National Regulations to allow information published under section 270 to identify a person with management and control of the service provider in relation to which enforcement action has been taken and to enable a regulatory authority to publish such information if the regulatory authority is satisfied it is in the public interest to do so.

Administrative requirements

No.	Proposal	Preferred option
8.7.1	Notifying the regulatory authority of a complaint	Amend the National Law so that providers are only required to notify the regulatory authority of a complaint that alleges: <ul style="list-style-type: none"> a serious incident has occurred or is occurring at the approved education and care service, or the National Law or National Regulations has been contravened.
8.7.2	Regulations — Medical conditions policy	No change. Instead, develop guidance for approved providers on how to comply with their obligations under regulation 90; including noting that a medical management plan is only required to be prepared where a child has a medical condition diagnosed by a registered medical practitioner.
8.7.3	Regulations — Evidence of insurance	No change to the National Law or the National Regulations. Continue to require the approved provider to keep evidence of the required insurance at the service premises/principal office in accordance with regulation 180.

Transitional and savings provisions

No.	Proposal	Preferred option
8.8.1	Qualification requirements for supervisors of volunteers and persons under 18 years (Victoria specific provision)	The requirement for educators who directly supervise volunteers or persons under the age of 18 years working in a service to also hold or be actively working towards a diploma level qualification be removed from transitional regulations that apply in Victoria. To clarify, the person supervising must still have attained the age of 18 and be an educator within the meaning of the National Law.

Sleep and rest policies

No.	Proposal	Preferred option
New	Sleep and Rest	The National Regulations be amended to require approved providers to have in place policies and procedures about sleep and rest for children and infants, similar to regulation 168(2). This would

No.	Proposal	Preferred option
		be an additional requirement to the policies and procedures requirements already specified in regulation 168; and Guidance materials are to be developed for approved providers, nominated supervisors and all educators on SIDS.

Proposed guidance/clarification of the National Law and National Regulations — Approvals

Proposed guidance/clarification of the National Law and National Regulations — Approvals

Assessment of capability

Guidance on assessing an applicant's capability to operate an education and care service will be developed for inclusion in the Operational Policy Manual to promote consistency in assessing the capability criteria.

Rationale: Currently there is a lack of guidance as to the consideration of an applicant's capability to operate an education and care service. It is considered that operational capability of the service provider is an important determinant of the safety and quality of a service and, as such, the inclusion of such a consideration in the operational policy manual is likely to be beneficial to the assessment process.

Responsibility for service operation

Guidance for providers will be developed on their obligations when subcontracting arrangements are entered into for the day to day management of approved services, namely that their legal obligations under the National Law and National Regulations remain unchanged, and that the service provider remains liable for their statutory obligations.

Rationale: Clarity has been sought about whether subcontracting arrangements are currently permitted under the National Law and, if so, where the legal responsibility for obligations relating to the operation of a service would rest. It should be noted that the liability of providers remains unchanged; for example, while providers may be able to subcontract, responsibility remains with the approved provider.

Discretion regarding prescribed information

The National Regulations will be amended to allow regulatory authorities to determine that any or all of the information set out in regulations 24 and 25 may not be required to be provided in exceptional circumstances.

Rationale: The National Law and National Regulations currently prescribe information that must be provided with various applications such as applications for provider approval, service approval and amendments to those approvals. In each case the legislation provides that a regulatory authority may seek further information for the purposes of determining such applications however, there is currently little scope for regulators to waive the need for applicants to provide all the prescribed information for any given application.

Proposed guidance/clarification of the National Law and National Regulations — Waivers

Conditions on grant of waivers

Amend the National Law to allow regulatory authorities the power to impose conditions on the grant of a service waiver or temporary waiver. The regulatory authorities' power should also include the ability to remove or change the conditions of a waiver at any time and reissue the service approval.

Rationale: Under the National Regulations, a waiver application must include details of the measures being taken by the provider to protect the wellbeing of children while the waiver is in effect. There is currently no avenue under the National Law to enforce any measures as a 'condition' of the waiver's approval. Additionally, a waiver exempts the service from meeting the entirety of the relevant regulation/element, and is in effect at all times.

Decision timeframes

Amend the National Law to provide that, where further information is requested by a regulatory authority in response to an application for a service waiver or temporary waiver, the time period for responding the

Proposed guidance/clarification of the National Law and National Regulations — Waivers

regulatory authority request is excluded from the 60 day limit within which the regulatory authority must decide the application.

Rationale: Unlike other applications under the National Law, any time taken to request and receive further information is not excluded from the maximum timeframe for making a decision.

Emergencies/exceptional circumstances

It will be clarified that a written application for a waiver in all circumstances will be required. No legislative change is required.

Proposed guidance/clarification of the National Law and National Regulations — Supervisors

Transitional arrangements

The National Law will be amended so that ACECQA is no longer required to maintain a register of certified supervisors.

Rationale: The introduction of amendments to the National Regulations expanding the classes of prescribed persons who may be granted a supervisor certificate without assessment encompasses most people and makes supervisor certificates largely redundant.

Proposed guidance/clarification of the National Law and National Regulations — Operational issues

12 Weeks ECT Leave Provision — Limiting the 12 weeks ECT leave to ‘within 12 months’ and amending 12 weeks to 60 days

Clarify the time period of 12 weeks in the existing provision so that it is expressed as 60 days, with the 60 days being a combined total of periods of absence and that this will apply in the case of any absence, not just ‘leave’.

Rationale: The operation of regulation 135 has created ambiguity for providers and regulatory authorities due to the wording of the provision. This is because even though the provision applies to a period not exceeding 12 weeks, in theory, providers are able to use the provision for an unlimited number of periods of up to 12 weeks each time. Despite the fact that there may not be evidence of misuse of the provision, there is concern across jurisdictions that there is confusion in the sector about interpretation of the provision.

12 Weeks ECT Leave Provision — Diploma qualified education requirements

That there is no change to the National Regulations regarding regulation 126 and that the issue of streamlining ratio and qualification requirements be considered as part of a future review.

Educator breaks

That the current guidance on educator breaks be removed and replaced with guidance requiring compliance with the law concerning prescribed ratio requirements and referring services to their regulatory authority in their state or territory for advice on jurisdiction specific provisions and/or guidance.

There will be no changes to the general provisions in the National Law or National Regulations concerning the application of prescribed ratio requirements during educator breaks. Provide jurisdiction specific savings provisions for Western Australia and Tasmania to mirror the existing South Australian provision.

Amend the existing Queensland provisions to expand the application of the rest period conditions to all current services.

Note that this matter should be re visited in a future review of the NQA.

Rationale: Current guidance on educator breaks will be removed to avoid confusion and ensure consistency between the legislative requirements and guidance material.

Powers of entry — by consent and issue of warrants

The National Law will be amended to provide that an authorised officer may enter any premises, including a residence, without a search warrant for the purpose of determining whether a service is operating without a service approval. It is proposed an authorised officer only be able to exercise this power where the written consent of the occupier of the premises is first obtained, and the authorised officer reasonably believes a person is operating an education and care services without a service approval at or from the premises. This would be an additional power to the power of authorised officers to enter premises with a search warrant under section 201 of the National Law.

Relevant jurisdictions to amend their application Act or corresponding laws to enable a Justice of the Peace, or any other relevant court or tribunal (in addition to a magistrate), to issue a search warrant wherever a search warrant may be issued under the National Law, noting this amendment would only apply in jurisdictions that currently empower a Justice of the Peace, or any other relevant court or tribunal (in addition to a magistrate), to issue search warrants.

Rationale: It is currently technically acceptable for an authorised officer to enter premises at any reasonable time without a search warrant, but with the consent of the premises' occupier, for the purposes of determining whether a service is operating with an approval. It is proposed the legislation be clarified to reflect this.

Extension of liability — suspension of approved provider or person with management or control of approved provider

The National Law will not be amended at this time to introduce a new form of notice suspending or disqualifying an individual from being an approved provider or a person with management or control of an approved provider. This issue to be revisited as part of a future review.

Rationale: The National Law does not provide much in the way of civil or administrative sanctions directed at persons with management and control of approved providers who contravene the National Law. Currently, a provider approval may be refused or cancelled on the basis of failing to have fitness and propriety of one or more of its persons with management or control, however this would require proof section 285 or 286 was breached, and most likely multiple breaches.

Definition of "serious detrimental action"

The current definition of 'serious detrimental action' in section 296 to be considered further in a future review for a redraft to clarify the protection against reprisal for a protected disclosure is not restricted solely to employees.

Rationale: The current definition of 'serious detrimental action' as drafted, if interpreted strictly, would limit the protection from reprisal against this action to only employees who assist the regulatory authority. This potentially limits the protection of other individuals such as contractors, parents or FDC educators from reprisal. Therefore it is proposed that the definition be extended to cover this class of other individuals.

Disclosure of information to other authorities

- Section 271 of the National Law concerning disclosure of information to authorities will be amended to alter the grounds for information sharing.
 - Section 271 of the National Law will make explicit that the National Authority and regulatory authorities may share information with each other (including regulatory authorities in participating jurisdictions), a relevant Commonwealth government department, any state or territory government department, any Commonwealth, state or territory public authority, or a state or territory local authority.
 - Subsection 271(3) of the National Law will be expanded for the purposes for which disclosures of information may be made by the disclosing entity, such that the disclosure is:

- reasonably necessary to promote the objectives of the National Quality Framework;
 - for the purposes of enabling or assisting the other relevant entity to perform or exercise any of its functions or powers under the National Law;
 - for the purposes of research or the development of national, state or territory policy with respect to education and care services;
 - for a purpose relating to the funding of education and care services;
 - for a purpose relating to the payment of benefits or allowances to persons using education and care services, provided the disclosure is not otherwise prohibited by law.
- Apart from if the disclosure is for the purposes of research or development of policy with respect to education and care services, remove the restriction on disclosures which prevents the disclosure of information Subsection 271(7) of the National Law will be amended to enable information to be provided that could identify or lead to the identification of an individual an approved provider, nominated supervisor, a suspended family day care educator, or a person who has been subject to certain specified enforcement action (which will be specified in the National Law).
 - Develop guidance materials around the use of NQA Information Technology System (NQA ITS) data and the sharing of certain contact details.

Rationale: The National Law currently limits the ability of participating jurisdictions of the NP NQA to share information in furtherance of the objectives of the National Quality Framework and in instances, for the purposes of the National Law, which includes ensuring the safety, health and wellbeing of children.

Prohibition notices

Amend the National Law to allow the National Authority to disclose to approved providers, upon request, information regarding persons subject to prohibition notices and suspended FDC educators and any persons with conditions or prohibitions in regard to being a nominated supervisor. This amendment should be worded to ensure that only relevant information is disclosed to providers with a genuine need to know.

Amend the National Law to make it an offence for a person to make a false declaration in regard to a prohibition notice (penalty \$6,000). This will enable the approved provider to discharge their obligation under section 188 of the National Law, which makes it an offence for an approved provider to engage a person to whom a prohibition notice applies. Guidance materials for approved providers will be developed with regard to asking potential employees during the recruitment process whether the potential employees are the subject of a prohibition.

Rationale: Limits on information sharing currently prevent the disclosure of such information. By allowing ACECQA to appropriately disclose this information, approved providers would be able to make more informed choices when recruiting employees, so as to ensure the safety, health and wellbeing of children.

Proposed guidance/clarification of the National Law and National Regulations — Administrative requirements

Notifying the regulatory authority of serious incidents — amend references to illness

The National Law and National Regulations will be clarified to require an approved provider to only notify the regulatory authority of a serious illness for which the child attended, or should have attended, a hospital. This would mean that services would not notify the regulatory authority of instances where a child only saw a general practitioner and was not hospitalised.

Rationale: This option will provide clarification to approved providers.

Notifying the regulatory authority of serious incidents — definitional issues

Amend the definition of 'serious incident' in regulation 12 in relation to the attendance of emergency services, to specify that notification only needs to be given to regulatory authorities where emergency services attended a location at which an education and care service is being provided, as a result of an emergency, and not, for example, as a result of any precautionary measures. Clarify the definition of 'emergency', in regulation 4 to mean incident, situation or event where there is an imminent or severe risk to the health, safety or wellbeing of a person or persons at a place where education and care services are being provided, and provide examples.

Rationale: These amendments are clarifying in nature.

Opportunities for streamlining

It is recommended jurisdictions and ACECQA:

- develop nationally consistent business rules for entering data and storing documents in the NQA ITS
- develop options to streamline NQF and FAL approval processes, including through development of a single paper-based application form, as a first step towards a combined online application process.

Rationale: There is an intent of minimising duplication in the approval processes and it has been agreed that work should be undertaken to further develop streamlining options, including potentially trialling and evaluating a paper-based application form with a view to determining further information exchange requirements.

Appendix B Summary of Costings

The aim of the National Quality Agenda (NQA) Review is to assess whether the goal of improving quality in early childhood education and care services is being met in the most efficient and effective way. An opportunity for the NQA Review is to reduce unnecessary administrative burden and improve efficiency and cost effectiveness for the early childhood education and care sector while maintaining quality. This appendix outlines the estimated regulatory impact identified through the Review and proposed changes to the National Law and National Regulations under the NQF. The costings have been developed in line with the Office of Best Practice Regulation's (OBPR) Regulatory Burden Measurement framework, and reviewed by Deloitte Access Economics. The Deloitte Access Economics report included consultation with peak bodies to test and validate the underlying assumptions.

The early childhood education and care sector is anticipated to benefit from a decrease in burden, namely from changes to streamline documentation of assessments or evaluations of school age children and removal of supervisor certificates. Ensuring consistent quality will also come with additional costs, for example, the cost of professional development associated with implementing a revised NQS and the costs of improving the oversight and support within FDC services. Nevertheless, it is anticipated that these costs will be outweighed by the associated benefits.

The diverse service types within the sector and variable practices of services provide Australian families with choice. The reader should understand the challenge in costing preferred options for such a diverse sector means that the costs are indicative and not definitive. At the time of costing the preferred options, there were some gaps in the data available. To ensure reasonable assumptions informed the cost or saving effect of proposed changes, stakeholders were consulted to validate the regulatory costings. Qualitative evidence and data to inform the regulatory costings was sourced from:

- The early childhood education and care peak bodies
- State and territory governments
- Feedback on the Consultation Regulation Impact Statement
- The Australian Children's Education and Care Quality Authority (ACECQA)
- National Quality Agenda IT System (NQA ITS)
- Standard Cost Model research conducted by Deloitte Access Economics on behalf of ACECQA, to accompany ACECQA's 2013 Report on the NQF and Regulatory Burden
- The Department of Education and Training Early Childhood and Child Care Quarterly Management Information Report (QMIR) — June quarter 2014
- 2013 National Early Childhood Education and Care Workforce Census (The Social Research Centre commissioned by the Department of Education)

Regulatory cost burden and deregulatory cost savings have been calculated based on the formula required by the OBPR:

Labour cost = Price × Quantity

= (Time required × Labour cost) × (Times performed × Number of businesses or community organisations × Number of staff)

Some proposed changes have been calculated as one-off costs which have been averaged over 10 years, whilst others are considered to be ongoing costs (these are indicated in Table 70 below).

Not all changes arising from the Review have been costed, these include options where decisions have been made to not change existing regulation or are unlikely to have a material regulatory burden on the early childhood education and care sector. The cost of penalties and administrative processes associated with providers and services not complying with requirements are excluded from the Regulatory Burden Measurement framework and as such, penalties and administrative activities are not costed.

Table 70 High level overview of regulatory costs and savings

Decision RIS Chapter	No. changes costed	Estimated cost impact (pa)	Estimated saving impact (pa)	Cumulative impact (pa)
1. Refining the NQS and assessment and rating process	3	\$1,566,550	-\$57,861,128	-\$56,528,686
2. Removing Supervisor Certificates	1	\$0	-\$116,802	-\$116,802
5. Changes to prescribed fees	1	\$617	\$0	\$617
6. National educator to child ratio for OSHC services	1	\$2,019,957	\$0	\$2,019,957
7. Improved oversight of and support within FDC services	3	\$10,387,833	\$0	\$10,387,833
8. Other changes	20	\$1,712,451	-\$1,110,324	\$602,127
Total	29	\$15,687,409	-\$59,088,254	-\$43,634,458

Note: costs and savings are estimates and are indicative and not definitive

The net regulatory cost or saving for each separate proposal is outlined in the table below.

Table 71 Estimated net regulatory costs and savings for proposals

DRIS Proposal	Proposed change	Cost type	Net regulatory cost or saving (\$pa)
1.1	Reducing the complexity of the National Quality Standard	Ongoing saving, one off transition cost*	\$39,482
1.3	Reduction in documentation of assessments or evaluations of school children in care	Ongoing saving, one off transition cost	-\$56,585,867
1.6	Excellent rating	Ongoing saving, ongoing cost*	\$17,818
2.1	Remove the supervisor certificates	Ongoing saving	-\$116,802
5.1	Introduce a fee for the extension of a temporary waiver	Ongoing cost	\$617
6.1	National educator to child ratio for OSHC services	Ongoing cost, one off recruitment cost*	\$2,019,957
7.1	Approved FDC providers across jurisdictions	N/A	N/A
7.2	Limiting the number of FDC educators in a service	Ongoing cost	\$616
7.3	Mandating a ratio of FDC co-ordinators to educators	Ongoing cost, one off recruitment cost*	\$10,381,011

DRIS Proposal	Proposed change	Cost type	Net regulatory cost or saving (\$pa)
7.5	FDC educator assistants' activities	One off cost	\$6,205
8.3	Approvals — assessment of capability	Ongoing cost	\$371
8.6	Supervisors/PIDTDC	Ongoing saving	-\$186
8.9	Consenting to the role of nominated supervisor or PIDTDC	Ongoing saving	-\$173
8.10	Notifications regarding nominated supervisor	Ongoing saving, Ongoing cost*	-\$167,685
8.25	Notifying the regulatory authority of a complaint	Ongoing saving	-\$297,000
8.26	Medical conditions policy	Ongoing saving	-\$236,016
8.27	Supervisors of volunteers — working with children checks — Victoria specific provision	One off cost	\$13,106
8.28	Other matters — Sleep and rest policies	Ongoing cost	\$28,564
8.29	FDC standards to apply to In Venue Care for FDC services	Ongoing cost	\$25,717
8.29	Display of information of person in charge not required in FDC service office	Ongoing saving	-\$17,339
8.29	Display of information of occurrence of infectious disease or anaphylaxis risk limited to FDC residence child attends	Ongoing saving	-\$171,915
8.29	FDC educator to notify prescribed changes in circumstances at the FDC residence/venue	Ongoing cost	\$171,915
8.29	Regular outings require a risk assessment at least once in a 12 month period	Ongoing cost	\$1,384,305
8.29	Application process for approval as an OSHC service in relation to soil assessment and/or planning permit not required if located on a school site	Ongoing saving	-\$35,206
8.29	Approvals — regulatory authorities may use discretion to seek any or all prescribed information in exceptional circumstances set out in regulations 24 and 25	Ongoing saving	-\$16,004
8.29	Approvals — extension of provider approval where death or incapacity of approved provider	Ongoing saving	-\$12
8.29	Waivers — regulatory authorities to have power to place conditions on grant of waivers	Ongoing cost	\$4,258
8.29	Clarification notification requirements for serious illness resulting in hospital attendance	Ongoing saving	-\$74,250
8.29	Clarification of the definition of attendance of Emergency Service	Ongoing saving	-\$14,850
8.29	Defining 'serious incidents' to specifically include physical/sexual abuse	Ongoing cost	\$109

*Costs are characterised by a combination of savings and costs OR ongoing costs and one off costs. These are calculated to a net overall amount.

Note: the costs and savings in this table are estimates and are indicative and not definitive.

Appendix C Further information on the National Quality Framework

Pre-National Quality Framework

Prior to the establishment of the NQF in 2012, the early childhood education and care (ECEC) sector in Australia was governed by a regulatory environment which was characterised by elements of complexity, inconsistent quality and duplication.

Regulatory responsibility was shared between state and territory governments and the Australian Government. State and territory regulators assumed responsibility for operational regulation, such as licensing and the associated compliance activities. At the national level, the Australian Government funded the National Childcare Accreditation Council (NCAC) to oversee quality assurance. Standards and processes varied across jurisdictions, as did regulatory coverage (both across jurisdictions and between state/territory systems and the national quality assurance scheme). This meant that services would be subject to different standards depending on the jurisdiction/s in which they operated — and children's experiences would vary accordingly. The quality of a child's development experience could possibly have varied depending on the state or territory in which they lived.

At the same time, given overlapping requirements of state licensing agencies and the NCAC, services that fell within the scope of both would be subject to duplicative requirements. The lines of regulatory demarcation were not clearly established and the regulatory compliance burden was increased as a result.

There was also limited information available to parents about the quality of education and care services. Limited information in turn constrained parents' ability to make informed decisions about the quality of the service their child attended.

Establishment of the National Quality Framework

In July 2009, COAG endorsed a vision of the Early Childhood Development Strategy that 'by 2020 all children have the best start in life to create a better future for themselves, and for the nation'. The NQF is one of the national reform initiatives that enable this vision to be progressed.

The process to establish the NQF commenced with the Australian and state and territory governments agreeing in December 2009 to a National Partnership Agreement on the National Quality Agenda for Early Childhood Education and Care (NP NQA).

Rationale for government intervention

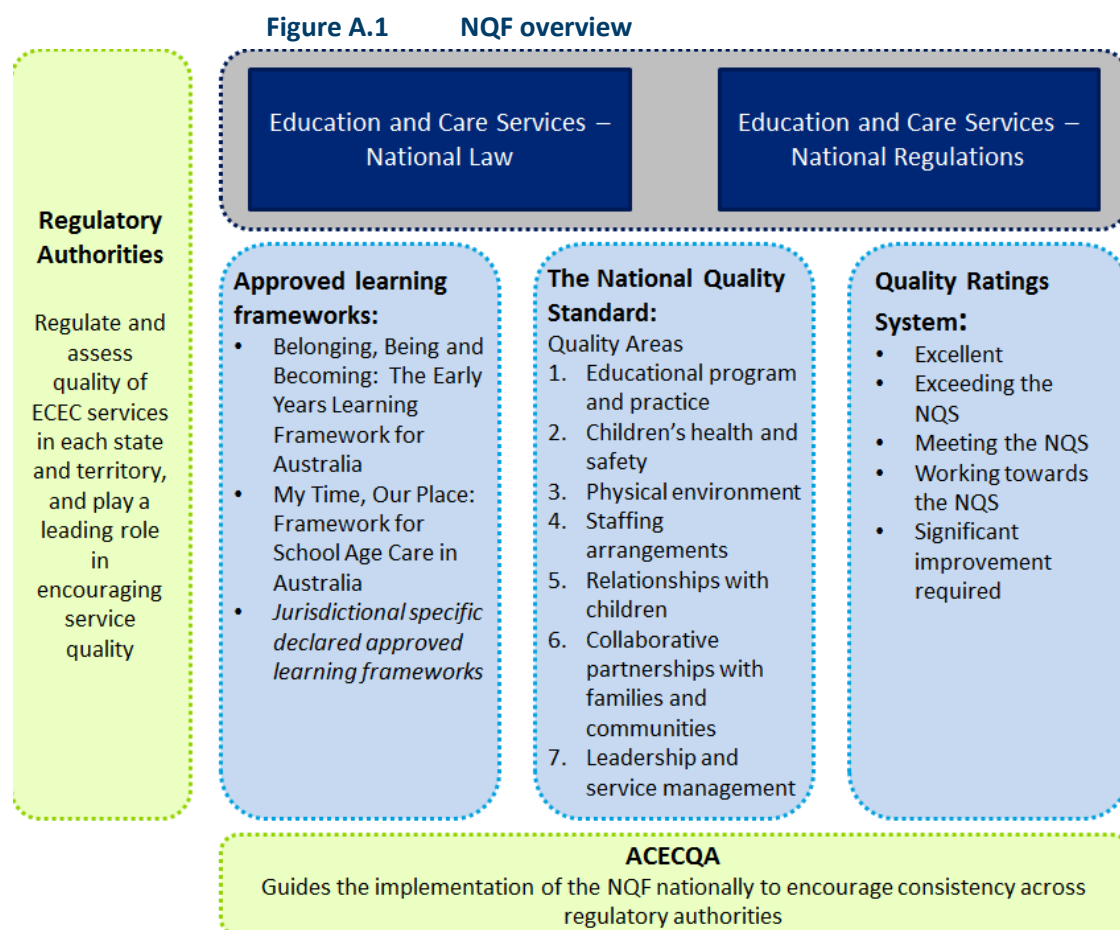
As part of the NP NQA, it was recognised that governments may intervene in the education and care sector for a range of reasons, with the overarching goal of improving the welfare of children and parents. These reasons, which were outlined in the 2009 *Council of Australian Governments Decision Regulation Impact Statement for Early Childhood Education and Care Quality Reforms*, include:

- **Supporting families' workforce participation** through ensuring the availability of high quality and affordable formal education and care services — a critical prerequisite to many parents' ability and willingness to remain in or re-enter the workforce.
- **Improving child development through the provision of high quality education and care.** A large body of evidence underscores the critical importance of high quality education and care to childhood development. Key aspects of quality linked to developmental outcomes include educator qualification standards and qualifications, educator to child ratios, the quality of the program and the nature of the interaction between the child and the educator or care giver.

- **Minimising the risk of harm** to children occurring in the education and care services context. A responsibility of government is to ensure the welfare of vulnerable members of society. This extends to ensuring that all services provided to children, regardless of their socioeconomic characteristics, meet minimum standards that support the developmental and educational outcomes of children. Regulation of education and care services provides a basis for establishing and maintaining minimum quality standards, and mitigating the risk that children will come to physical, developmental, social or emotional harm.
- **Addressing information asymmetries.** Historically, it has been difficult for families to accurately assess the level of quality on offer by a service. This may limit their ability to make informed decisions regarding their children's participation in ECEC. Governments are in a unique position to overcome this and to collect and disseminate data and information which is relevant, reliable and comparable.
- **Supporting children from disadvantaged backgrounds.** The participation of children from disadvantaged backgrounds in high quality early education and care has been found to be associated with increased participation and retention in later education, positive social behaviours in school and later life and higher educational achievement.

NQF structure and components

The structure and major components of the NQF, including the National Law and the *Education and Care Services National Regulations 2011* (National Regulations), are shown below.



NQF legislative structure

The NQF replaced separate licensing and quality assurance systems across jurisdictions, including those by state and territory governments and the former NCAC, and is applicable to most LDC, FDC, outside school hours care services (OSHC) and preschools in Australia. The NQF operates under an 'applied law system' where a national law is established by a host jurisdiction enacting a law and other jurisdictions adopt the law or pass corresponding legislation. In the case of the NQF, Victoria enacted the National Law and other jurisdictions either enacted its own legislation that applied Schedule 1 of Victoria's law, or passed other legislation that corresponded to it.

The law enacted in each state and territory is outlined in Table 51.

Table 72 Legislation establishing the NQF in each state and territory

Jurisdiction	Legislation
Victoria (Host)	<i>Education and Care Services National Law Act 2010</i>
New South Wales	<i>Children (Education and Care Services National Law Application) Act 2010</i>
Queensland	<i>Education and Care Services National Law (Queensland) Act 2011</i>
South Australia	<i>Education and Early Childhood Services (Registration and Standards) Act 2011</i>
Western Australia	<i>Education and Care Services National Law (WA) Act 2012</i>
Tasmania	<i>Education and Care Services National Law (Application) Act 2011</i>
Australian Capital Territory	<i>Education and Care Services National Law (ACT) Act 2011</i>
Northern Territory	<i>Education and Care Services (National Uniform Legislation) Act 2011</i>

Supporting the National Law is the National Regulations, which provide details on a range of operational requirements and related information that dictate how the provisions of the National Law are to be applied.

It should be noted that in Western Australia and Tasmania, preschools are subject to the NQF but not regulated under the National Law and National Regulations. Rather, they fall within the remit of each state's school education law. However, these jurisdictions have agreed, through the National Partnership arrangements, to reflect the NQF in early childhood settings within schools.

The NQF uses a mixture of outcomes based legislative approaches and instruction for structural components of quality (which refer to characteristics which can easily be measured, such as educator to child ratios, workforce qualifications and the physical environment). Previously some jurisdictions had more prescriptive legislation which had clarity, but didn't offer the flexibility of an outcomes based approach which is considered best practice regulation when it is appropriate for the activity being regulated. The NQF requires that services understand the interaction between the legislation, assessment and rating processes and the NQS. To support implementation a National Quality Framework Resource Kit was developed and distributed to all services in scope of the NQF in order to provide information and guidance to the sector on the National Law, National Regulations, the NQS and the Quality Improvement Plan.

Regulatory responsibilities

A regulatory authority in each state and territory is primarily responsible for administering the NQF, including approving, monitoring and assessing the quality of services. These bodies are usually the first regulatory point of contact for services.

ACECQA is responsible for guiding the implementation of the NQF and supporting the consistent and effective implementation of the national system across all states and territories. ACECQA has a limited range of regulatory responsibilities. While ACECQA does not quality rate services, it does award the 'Excellent rating' and conduct second tier reviews of rating decisions.

National Quality Standard

The NQS is a key aspect of the NQF. It is established as part of the Framework under the National Regulations.

The NQS consists of seven quality areas, each containing standards and elements against which children's education and care services are assessed and rated. Assessment is the responsibility of state and territory regulators (although the Excellent rating can only be awarded by ACECQA following consideration of a provider's application). The seven quality areas covered by the NQS are listed below, noting that under each area there are standards and elements (which are not listed here):

1. Educational program and practice

- Standard 1.1: An approved learning framework informs the development of a curriculum that enhances each child's learning and development.
- Standard 1.2: Educators and co-ordinators are focused, active and reflective in designing and delivering the program for each child.

2. Children's health and safety

- Standard 2.1: Each child's health is promoted.
- Standard 2.2: Healthy eating and physical activity are embedded in the program for children.
- Standard 2.3: Each child is protected.

3. Physical environment

- Standard 3.1: The design and location of the premises is appropriate for the operation of the service.
- Standard 3.2: The environment is inclusive, promotes competence, independent exploration and learning through play.
- Standard 3.3: The service takes an active role in caring for its environment and contributes to a sustainable future

4. Staffing arrangements

- Standard 4.1: Staffing arrangements enhance children's learning and development and ensure their safety and wellbeing.
- Standard 4.2: Educators, co-ordinators and staff members are respectful and ethical.

5. Relationships with children

- Standard 5.1: Respectful and equitable relationships are developed and maintained with each child.
- Standard 5.2: Each child is supported to build and maintain sensitive and responsive relationships with other children and adults.

6. Collaborative partnerships with families and communities

- Standard 6.1: Respectful and supportive relationships with families are developed and maintained.
- Standard 6.2: Families are supported in their parenting role and their values and beliefs about childrearing are respected.
- Standard 6.3: The service collaborates with other organisations and service providers to enhance children's learning and wellbeing.

7. Leadership and service management

- Standard 7.1: Effective leadership promotes a positive organisational culture and builds a professional learning community.
- Standard 7.2: There is a commitment to continuous improvement.
- Standard 7.3: Administrative systems enable the effective management of a quality service.

Ratings aim to promote transparency and accountability and help parents to access information about the quality of education and care services. Every service receives a rating for each standard, quality area and an overall rating. These ratings must be displayed by each service and are published on the ACECQA and the MyChild websites.

There are five rating levels within the national quality assessment and rating process:

- Excellent
- Exceeding the NQS
- Meeting the NQS
- Working Towards the NQS
- Significant Improvement Required.

Appendix D Overview of consultation participation

This appendix provides additional detail regarding consultation participation, including the number and type of respondents to each form of consultation.

Public consultation sessions

The sessions were held throughout November 2014 and into early December 2014 and the session locations and number of attendees in each state and territory are outlined in Table 71. A total of 1,783 people registered for these sessions across Australia. A session with peak bodies was also held in each state and territory.

Table 73 Number of public consultation session attendees by state and territory

Location	Number of attendees*
New South Wales Sessions were held in Sydney (3 sessions, including one with peak bodies), Newcastle (2 sessions), Penrith, Parramatta, Albury (2 sessions) and Wollongong (2 sessions)	442
Victoria Sessions were held in Melbourne (3 sessions, including one with peak bodies), Moe, Nunawading, Bendigo, Point Cook (2 sessions) and Parkville (2 sessions)	326
Queensland Sessions were held in Brisbane (3 sessions, including one with peak bodies), Cairns (2 sessions), Townsville (2 sessions), Bundaberg, Gold Coast (2 sessions) and Toowoomba	363
Western Australia Sessions were held in Perth (3 sessions, including one with peak bodies), Bunbury, Port Hedland and Kalgoorlie	271
South Australia Sessions were held in Adelaide (3 sessions, including one with peak bodies), Elizabeth, Noarlunga and Port Pirie	160
Tasmania Sessions were held in Hobart (3 sessions, including one with peak bodies), Burnie and Launceston	96
Australian Capital Territory Sessions were held in Canberra (3 sessions, including one with peak bodies)	54
Northern Territory Sessions were held in Darwin (3 sessions, including one with peak bodies), and Alice Springs (2 sessions)	71
Total	1,783

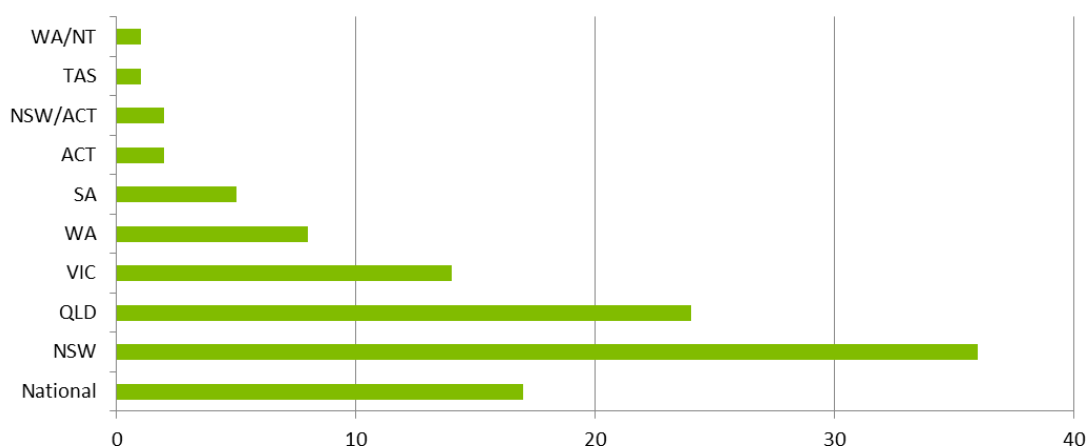
* These numbers were recorded by NOSHSA and reflect the number of participants registered to attend each session. They may not represent the number who actually attended each session.

Written submissions

In total, 113 written submissions were received. As it was a public consultation process, respondents were strongly encouraged to make submissions that could be made publicly available. However, six respondents provided submissions in confidence and these will not be published.

Each written submission was accompanied by a cover sheet, where respondents were asked to indicate what state they were from. Chart B.1 shows the number of written submissions by state (where the respondent indicated their state).

Chart 1 Number of written submissions by jurisdiction



Note: A number of written submissions were submitted by organisations covering more than one state.

Approximately one-fifth (19 per cent) of submissions were received from major peak bodies and large providers. About another two-fifths were received by providers, the majority of these written by providers in the FDC sector. Approximately 10 per cent were written by government bodies, the vast majority being local councils. The remaining submissions were made by interested stakeholders, community groups and educational institutions.

While the number of formal written submissions received by parents was minimal, it is noted that the Early Learning Association Australia (ELAA) is a peak body representing the voice of parents and service providers. As such, the ELAA submission reflects the views of parents to some extent. Similarly, Early Childhood Australia is the peak early childhood advocacy body for young children and their families.

The following is a list of written submissions received through RIS consultation process. The six confidential submissions that were received are not included in the below list. For privacy reasons, submissions made by individuals have been marked as 'Individual' rather than full names being provided.

Written submissions

- Association of Neighbourhood Houses & Learning
- Australian Association for Environmental Education Early Childhood Special Interest Group)
- Australian Childcare Alliance (ACA)
- Australian Community Children's Services (ACCS)
- Australian Education Union
- Balmain East Out of School Care
- Best Chance
- Blue River Family Day Care
- Brisbane Family Day Care
- Brisbane South Family Day Care
- Brisbane South Family Day Care (2)
- Bundaberg Baptist Family Day Care Scheme
- Canterbury City Council
- Capricornia Family Day Care
- CareWest Ltd
- Catholic Education Office of Western Australia (CEOWA)
- Centre for Early Childhood Research (CREC)
- Centre Support
- Child Australia
- Chinese Australian Services Society Ltd. (CASS)

- Churches of Christ in Queensland, Churches of Christ Care
- City of Casey
- Communities@Work
- Community Child Care Association
- Community Child Care Co-Operative (NSW)
- Community Connections Solutions Australia
- Creche and Kindergarten Assoc Ltd (C&K)
- CPS Child & Family Centre
- Department of Education WA
- Early Childhood Australia
- Early Childhood Management Services
- Early Learning and Care Council of Australia
- Early Learning Association Australia
- Environmental Education in Early Childhood
- Family Day Care Association of Queensland
- Family Day Care Australia (FDCA)
- Family Day Care Educators Association WA
- Family Day Care WA
- Gayndah Family Day Care
- Goodstart Early Learning
- Gowrie Australia
- Helping Hands Network
- Hicks, Derek & Emma
- Hobson Bay City Council
- Holroyd City Council
- Illawarra Area Child Care
- Independent Education Union of Australia
- Individual A
- Individual B
- Individual C
- Individual D
- Individual E
- Individual F
- Individual G
- Intereach Limited
- Isis Family Day Care
- KU Bradfield Park Children's Service
- KU Children's Services
- Kurri Kurri & District Preschool Kindergarten
- Lady Gowrie Child Centre Inc
- Lady Gowrie Tasmania
- Lake Macquarie Family Day Care
- Learning Happens
- Leichhardt Council
- Local Government Children's Services Reference Group
- Mallee Track Health and Community Service
- Municipal Association of Victoria
- National In Home Childcare Association
- National Outside School Hours Service Association
- Nature Alliance Family Day Care Service
- Network of Community Activities

- Network SA Resource Advisory & Management Services
- New South Wales Family Day Care Association
- Noah's Ark
- NSW Children's Services Forum
- Office of the NSW Small Business Commissioner
- Office of the State Coroner (QLD)
- OSHC Network (informal)
- OSHC Support Services
- OSHClub
- Penrith City Council
- Play & Learn WA
- Port Stephens Council
- QLD Early Childhood Sustainability Network
- Queensland Children's Activities Network
- Remote & Isolated Children's Exercise Inc
- Santa Sabina College
- Save the Children Australia
- School's Out OSHC
- Secretariat National Aboriginal and Islander Child Care
- Sherpa Kids
- South Burnett FDC
- Sustainable Environmental Education Development, Sutherland Shire
- Sutherland Shire Council Children's Services
- The Association of Independent Schools of SA (AISSA)
- The Association of Independent Schools of WA (AISWA)
- Townsville and Regions Family Day Care
- Tropical North Family Day Care
- United Voice
- Uniting Care Children's Services
- University of New England
- University of Sydney
- Warringah Council Children's Services
- Warwick & District Family Day Care
- Willoughby City Council
- Woden Community Services

Online survey

An online survey was developed so that interested parties could indicate their level of support for whether a change was required, and subsequent level of support on the proposed options for change. In relation to each proposal, respondents were asked the following questions:

1. Do you think the current arrangements should remain unchanged?
 - a. Yes, retain the current arrangements.
 - b. No, change the current arrangements.
2. Please briefly explain why (optional).
3. To what extent do you agree with (insert proposed option for change)?
 - a. Strongly disagree
 - b. Disagree
 - c. Neutral
 - d. Agree
 - e. Strongly agree

There were 307 completed surveys and a further 426 surveys that were in progress when the survey was closed. However, 63 of the 426 in progress surveys did not answer any questions at all. This means that, in total, 670 surveys included responses that could be analysed²⁸.

Survey respondents were also asked the following questions:

- Which term best describes you?
- What part of the sector are you involved in?
- What state or territory are you from?

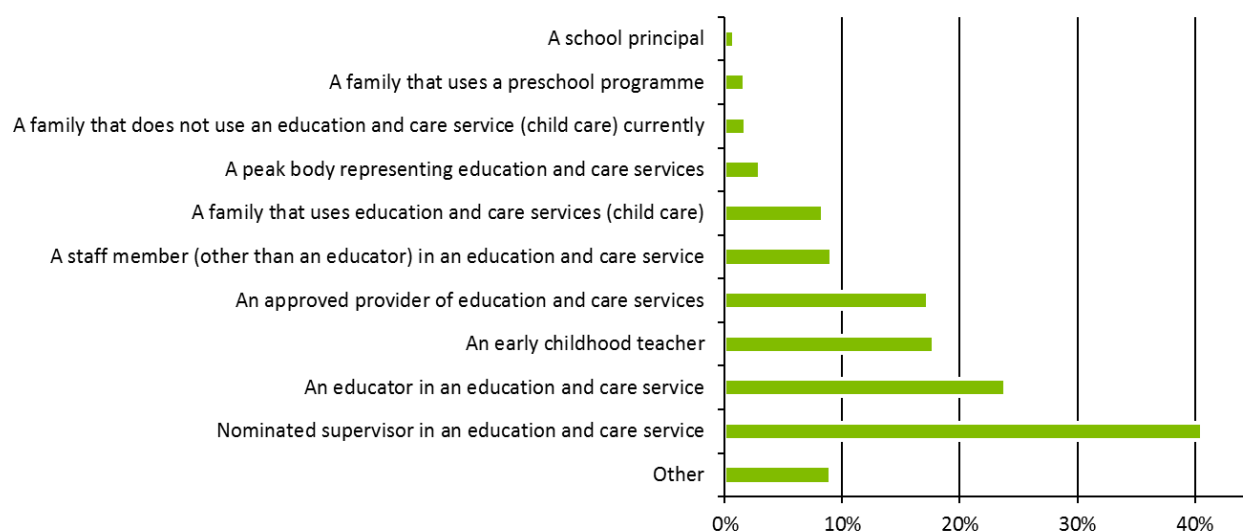
In regard to the type of respondents to the survey, less than 5 per cent were peak bodies. Most survey respondents owned and/or worked in education and care services, with over 40 per cent of respondents stating they were nominated supervisors, followed by educators, ECTs and approved providers. Families were the among the least frequent survey respondents, with only 79 responses indicating they were a family.

Over half (51 per cent) of survey respondents were from the LDC sector, followed by OSHC (27 per cent), preschool/kindergarten (26 per cent) and FDC (25 per cent). Less than 10 per cent of the survey responses were from the occasional care, mobile or BBF sectors. It is noted that more than one answer could be selected, so some individual respondents represent more than one part of the sector.

Analysing the distribution of survey responses by state, 37 per cent of the responses were from New South Wales. The next highly represented was Queensland (28 per cent), Victoria (14 per cent) and South Australia (10 per cent). Western Australia, Tasmania, Australian Capital Territory and the Northern Territory all had representation of less than 10 per cent of survey responses.

The following charts show the distribution of survey respondents by type, sector and geographical location.

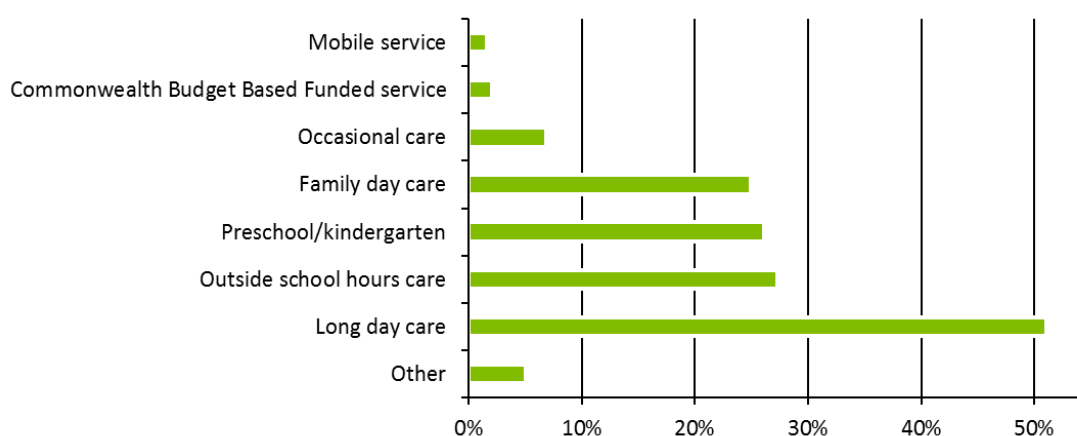
Chart 2 Distribution of survey respondents by type



Total count of responses = 892 (respondents were able to select more than one answer). Examples of 'Other' include Authorised Officer, Early Learning Consultant and Training and Resource Officer for Children's Services.

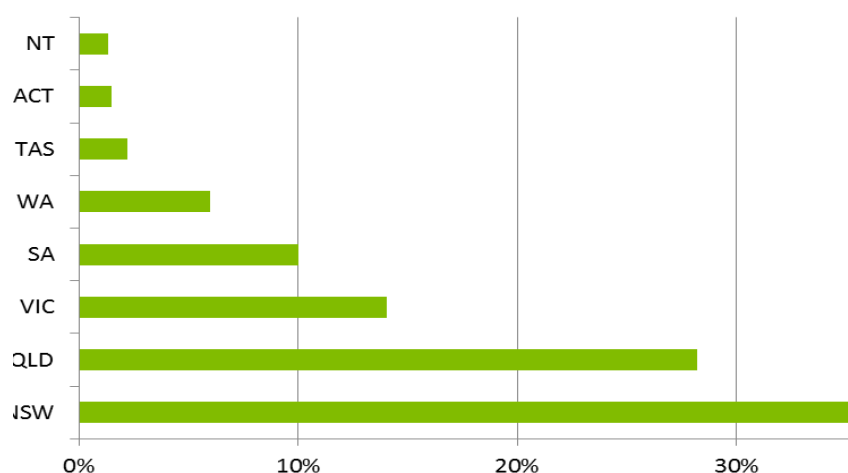
²⁸ Note that not all questions were answered in all surveys — therefore, for a given question, the number of respondents will be less than 670. Where survey results are presented in this chapter, the total number of surveys that answered the question will be included for context.

Chart 3 Distribution of survey respondents by sector



Total count of responses = 972 (respondents were able to select more than one answer). Examples of other include in home care, RTO, school and government department.

Chart 4 Distribution of survey respondents by state



Total count of responses = 670.

Online comments

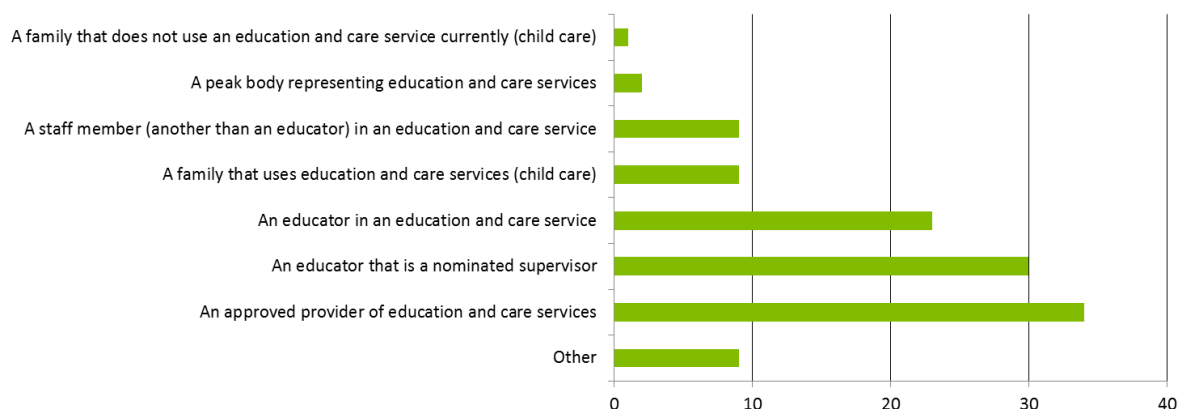
Each person who submitted an online comment was asked to provide some high-level profile information. Similar to the online survey, the vast majority of online comments were from those who own or work in education and care services (approved providers, nominated supervisors and educators). Approximately half of the online comments received were from educators, with an additional 34 (32 per cent) from approved providers. Families and staff members (other than educators) also submitted online comments, though to a lesser degree, representing approximately 8 per cent of online comments each. Only two online comments were received from peak bodies.

The LDC sector was also well represented among those that made online comments (42 per cent), followed by preschool/kindergarten (20 per cent) and FDC (15 per cent). Less than 10 per cent of online comments were made by OSHC, occasional care or BBF services combined.

The geographical representation of online comments was similar than that of the surveys and submissions, with NSW having the highest representation (42 per cent). This was followed by Victoria (24 per cent) and South Australia (12 per cent). Queensland, Western Australia, Northern Territory and Tasmania all had less than 10 per cent representation each, with no online comment being made from a respondent in the Australian Capital Territory.

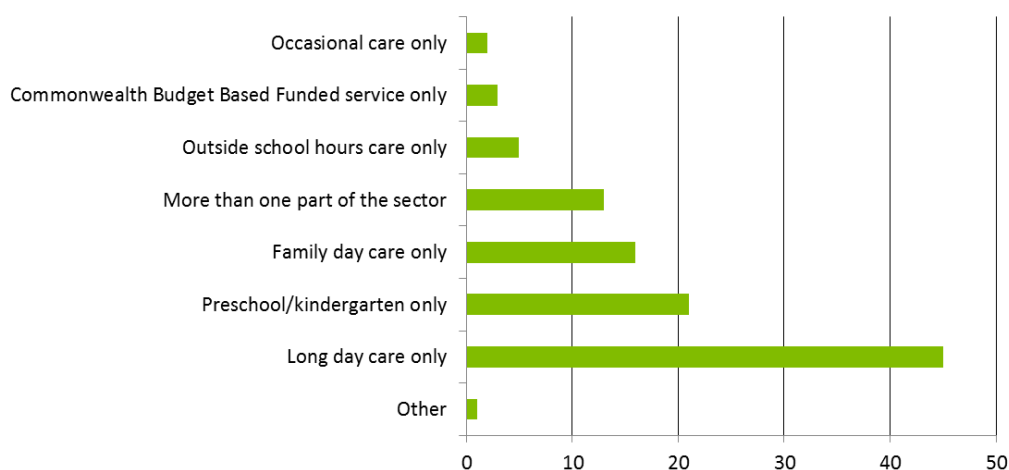
The following charts show the distribution of online comment respondents by type, sector and geographical location.

Chart 5 Distribution of online comment respondents by type



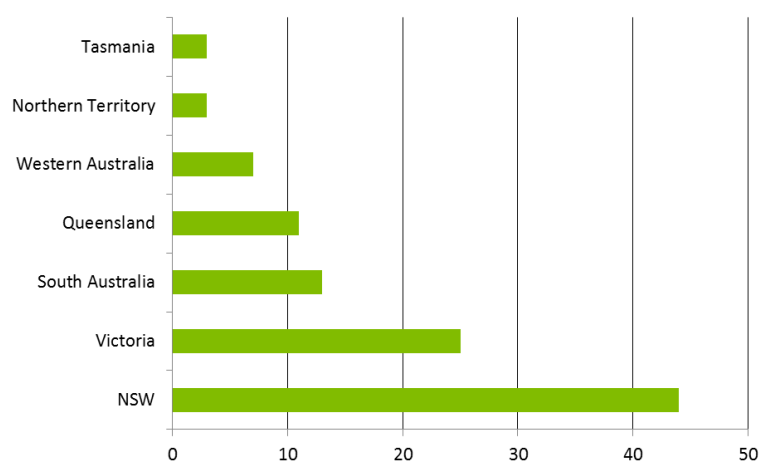
Total count of responses = 117 (respondents were able to select more than one answer).

Chart 6 Distribution of online comment respondents by sector



Total count of responses = 106

Chart 7 Distribution of online comment respondents by state



Total count of responses = 106.

Appendix E Draft revised National Quality Standard

RIS Proposal 1.1 is to reduce the complexity of the NQS. A revised NQS, prepared by governments, is included at Chart 8.

Overall, the revised NQS will strengthen quality through providing greater clarity for services, assisting them to understand what is required to meet the NQS, thereby leading to improved quality and outcomes.

The refined version of the NQS has the following streamlining features:

- it encompasses all important aspects of service quality and retains applicability across all service types
- it consists of fewer standards and elements — 15 standards instead of 18, and 40 elements instead of 58
- the standards are more equally balanced in the number of elements they contain
- it clarifies the quality concept in each element and standard, reducing duplication and overlap
- it uses language that can be more readily and consistently understood, accessible and straightforward, with more clearly defined concepts
- it uses wording for each element that is distinct from the standard under which it sits
- it will support a more streamlined system of descriptors to make it easier for regulatory authorities to assess quality accurately and consistently
- it is transparent, efficient and effective for services, regulatory authorities and families.

How feedback from the Consultation RIS process and from the further stakeholder consultation was incorporated into the revised NQS follows Chart 8.

Chart 8 Draft revised National Quality Standard

The National Law requires assessment of the service in accordance with the National Regulations to determine whether the service meets the NQS and the other requirements of the National Regulations, for example, for element 4.1.1, all educator to child ratios and qualification requirements must be maintained at all times for the service to meet this element

Proposed	Concept	Descriptor
QA1		Educational program and practice
1.1	Program	The educational program enhances each child's learning and development.
1.1.1	Approved learning framework	Curriculum decision making contributes to each child's learning and development outcomes in relation to their identity, connection with community, wellbeing, confidence as learners and effectiveness as communicators.
1.1.2	Child-centred	Each child's current knowledge, strengths, ideas, culture, abilities and interests are the foundation of the program.
1.1.3	Program learning opportunities	All aspects of the program, including routines, are organised in ways that maximise opportunities for each child's learning.
1.2	Practice	Educators facilitate and extend each child's learning and development
1.2.1	Intentional teaching	Educators are deliberate, purposeful, and thoughtful in their decisions and actions.
1.2.2	Responsive teaching and scaffolding	Educators respond to children's ideas and play and extend children's learning through open-ended questions, interactions and feedback.
1.2.3	Child directed learning	Each child's agency is promoted, enabling them to make choices and decisions that influence events and their world.
1.3	Assessment and planning	Educators and co-ordinators take a planned and reflective approach to implementing the program for each child.
1.3.1	Assessment and planning cycle	Each child's learning and development is assessed or evaluated as part of an ongoing cycle of observation, analysing learning, documentation, planning, implementation and reflection.
1.3.2	Critical reflection	Critical reflection on children's learning and development, both as individuals and in groups, drives program planning and implementation.
1.3.3	Information for families	Families are informed about the program and their child's progress.
QA2		Children's health and safety
2.1	Health	Each child's health and physical activity is supported and promoted
2.1.1	Wellbeing and comfort	Each child's wellbeing and comfort is provided for, including appropriate opportunities to meet each child's need for sleep, rest and relaxation.
2.1.2	Health practices and procedures	Effective illness and injury management and hygiene practices are promoted and implemented.
2.1.3	Healthy lifestyle	Healthy eating and physical activity are promoted and appropriate for each child.
2.2	Safety	Each child is protected.
2.2.1	Supervision	At all times, reasonable precautions and adequate supervision ensure children are protected from harm and hazard.
2.2.2	Incident and emergency management	Plans to effectively manage incidents and emergencies are developed in consultation with relevant authorities, practised and implemented.
2.2.3	Child protection	Management, educators and staff are aware of their roles and responsibilities to identify and respond to every child at risk of abuse or neglect.
QA3		Physical environment
3.1	Design	The design of the facilities is appropriate for the operation of a service.
3.1.1	Fit for purpose	Outdoor and indoor spaces, buildings, fixtures and fittings are suitable for their purpose, including supporting the access of every child.
3.1.2	Upkeep	Premises, furniture and equipment are safe, clean and well maintained.
3.2	Use	The service environment is inclusive, promotes competence and supports exploration and play-based learning.
3.2.1	Inclusive environment	Outdoor and indoor spaces are organised and adapted to support every child's participation and to engage every child in quality experiences in both built and natural environments.
3.2.2	Resources support play-based learning	Resources, materials and equipment allow for multiple uses, are sufficient in number, and enable every child to engage in play-based learning.
3.2.3	Environmentally responsible	The service cares for the environment and supports children to become environmentally responsible.

Proposed	Concept	Descriptor
QA4		Staffing arrangements
4.1	Staffing arrangements	Staffing arrangements enhance children's learning and development.
4.1.1	Organisation of educators	The organisation of educators across the service supports children's learning and development.
4.1.2	Continuity of staff	Every effort is made for children to experience continuity of educators at the service.
4.2	Professionalism	Management, educators and staff are collaborative, respectful and ethical.
4.2.1	Professional collaboration	Management, educators and staff work with mutual respect and collaboratively, and challenge and learn from each other, recognising each other's strengths and skills.
4.2.2	Professional standards	Professional standards guide practice, interactions and relationships.
QA5		Relationships with children
5.1	Relationships between educators and children	Respectful and equitable relationships are maintained with each child.
5.1.1	Positive educator to child interactions	Responsive and meaningful interactions build trusting relationships which engage and support each child to feel secure, confident and included.
5.1.2	Dignity and rights of the child	The dignity and rights of every child are maintained.
5.2	Relationships between children	Each child is supported to build and maintain sensitive and responsive relationships.
5.2.1	Collaborative learning	Children are supported to collaborate, learn from and help each other.
5.2.2	Self-regulation	Each child is supported to regulate their own behaviour, respond appropriately to the behaviour of others and communicate effectively to resolve conflicts.
QA6		Collaborative partnerships with families and communities
6.1	Supportive relationships with families	Respectful relationships with families are developed and maintained and families are supported in their parenting role.
6.1.1	Engagement with the service	Families are supported from enrolment to be involved in the service and contribute to service decisions.
6.1.2	Parent views are respected	The expertise, culture, values and beliefs of families are respected and families share in decision-making about their child's learning and wellbeing.
6.1.3	Families are supported	Current information is available to families about the service and relevant community services and resources to support parenting and family wellbeing.
6.2	Collaborative partnerships	Collaborative partnerships enhance children's inclusion, learning and wellbeing.
6.2.1	Transitions	Continuity of learning and transitions for each child are supported by sharing information and clarifying responsibilities.
6.2.2	Access and participation	Effective partnerships support children's access, inclusion and participation in the program.
6.2.3	Community engagement	The service builds relationships and engages with its community.
QA7		Governance and Leadership
7.1	Governance	Governance supports the operation of a quality service.
7.1.1	Service philosophy and purpose	A statement of philosophy guides all aspects of the service's operations.
7.1.2	Management systems	Systems are in place to manage risk and enable the effective management and operation of a quality service.
7.1.3	Roles and responsibilities	Roles and responsibilities are clearly defined, and understood, and support effective decision making and operation of the service.
7.2	Leadership	Effective leadership builds and promotes a positive organisational culture and professional learning community.
7.2.1	Continuous improvement	There is an effective self-assessment and quality improvement process in place
7.2.2	Educational leadership	The educational leader is supported and leads the development and implementation of the educational program and assessment and planning cycle
7.2.3	Development of professionals	Educators, co-ordinators and staff members' performance is regularly evaluated and individual plans are in place to support learning and development.

Incorporation of consultation feedback

A number of changes have been made to the wording of the revised NQS following feedback received through the Consultation RIS process and further stakeholder consultation.

Key feedback included:

In response to stakeholder feedback that some concepts within Quality Area 7 (e.g. governance), are difficult to understand, the revised NQS more clearly expresses what is required for these elements to be met. Definitions of leadership, governance and management as they relate to the sector were considered, and standards and elements within these overarching concepts were also categorised and reordered accordingly.

The term 'documentation' was included in element 1.C.i in response to sector concern that this term was removed from the version of the NQS in the Consultation Regulation Impact Statement. Participants at further consultations were supportive of the notion of documentation as an aspect of the assessment and planning cycle. Some participants suggested omitting the term may reduce the 'over documentation' seen in the sector currently. However, others preferred retaining 'documentation' to avoid creating the impression that documentation of children's learning is no longer required. It was also agreed it would be beneficial to develop further guidance for the sector and training for authorised officers about the amount and type of documentation required.

In response to stakeholder feedback that scaffolding is a technique of responsive teaching, the concept for 1.B.ii was broadened to 'responsive teaching and scaffolding'. Consideration was also given to whether to merge this element (1.B.ii) with element 1.B.i (intentional teaching) due to the close relationship between responsive and intentional teaching. It was agreed that there was sufficient distinction between these concepts to justify two separate elements and that this would be beneficial in driving quality improvement.

Some consultation feedback expressed concerns that cultural inclusion and the celebration of culture could be more prominently included in the revised NQS. It was considered that including an individual element about cultural inclusion would detract from it as a key concept throughout all elements of the NQS. Culture is a prominent theme in the approved learning frameworks. Officials decided to add the concept of culture into element 6.A.ii and to address this in additional sector guidance and authorised officer training. Guidance would emphasise culture in the context of program planning (element 1.A.i) and community engagement (6.B.iii). This reflects the current approach of a number of jurisdictions to cultural inclusion and promotion of culture.

An amendment was proposed to address stakeholder concern about removing explicit references to requirements of the National Law and National Regulations in the revised NQS. The proposed amendment is for the National Regulations to note that section 133 of the National Law requires assessment of the service in accordance with the National Regulations to determine whether the service meets the NQS and the requirements of the National Regulations.

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